

**1991 - 1996
ANNUAL REPORTS**

ILLINOIS DOCUMENTS

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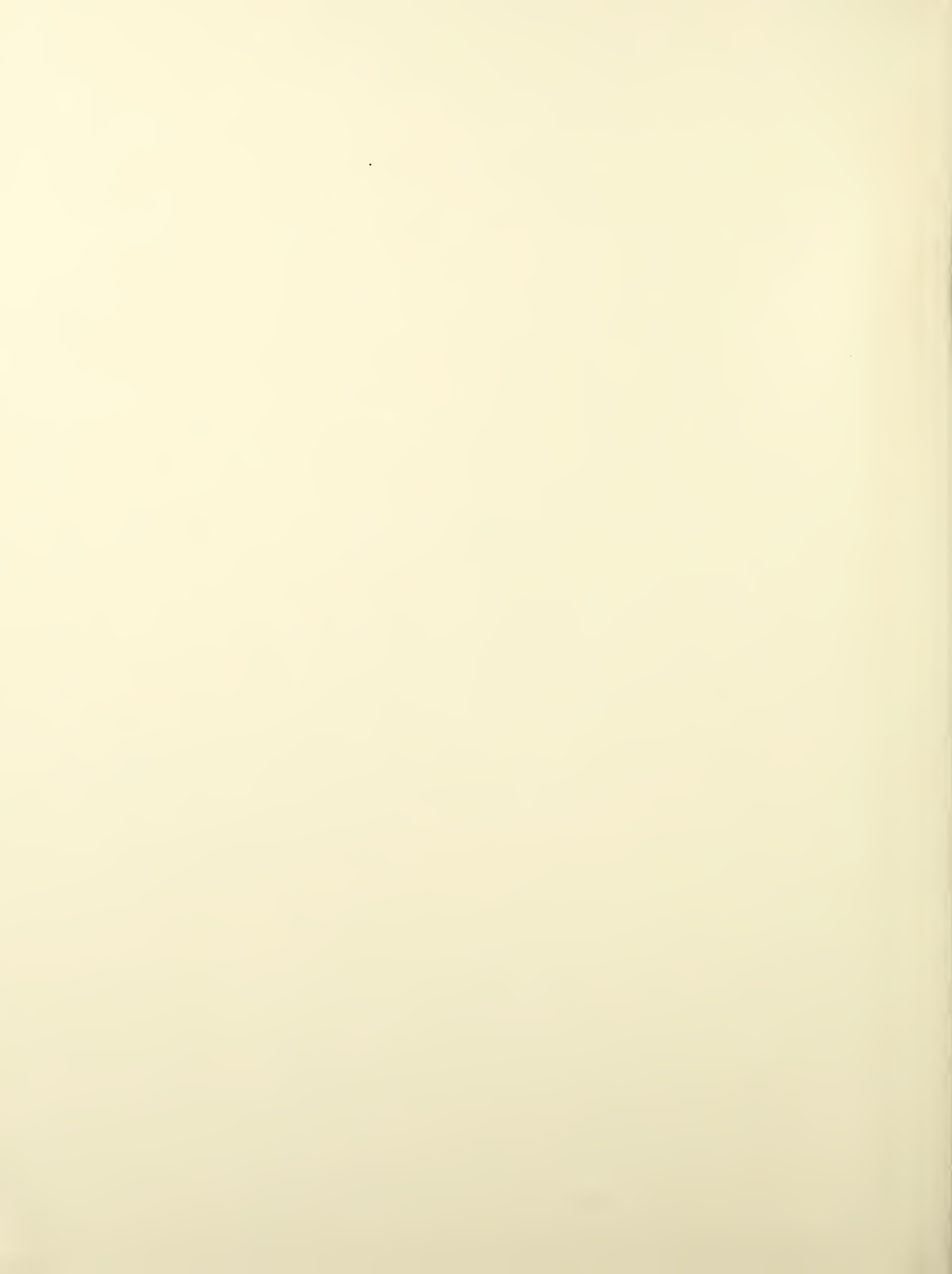
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**JOINT COMMITTEE ON
ADMINISTRATIVE RULES**

*Submitted to the Members of the
Illinois General Assembly*



JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

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REP PHIL NOVAK
REP COY PUGH
REP DAN RUTHERFORD
REP LARRY WOOLARD

HONORABLE MEMBERS OF THE 90TH GENERAL ASSEMBLY:

As Co-Chairs of the Joint Committee on Administrative Rules, we hereby submit the 1991-1996 Annual Reports of that Committee. An overview of the Committee's rules review activities can be found in the following pages.

The Joint Committee on Administrative Rules gratefully acknowledges your continued support and assistance, and we encourage all members of the General Assembly to take an active role in this vital oversight function which guarantees that the public right to know is protected through the promulgation of specific rules that are applied equally to everyone regulated. We welcome your suggestions and comments on agency rules and the development of the role of the Committee. Only as each elected representative becomes concerned and involved in the oversight process can the Committee ensure that the intent of the legislation we pass is maintained.

Respectfully,


A handwritten signature of Senator Donne E. Trotter.

Senator Donne E. Trotter
Co-Chairman

A handwritten signature of Representative Tom Ryder.

Representative Tom Ryder
Co-Chairman





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JCAR

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JCAR

ITS CREATION AND ITS PURPOSE

CREATION

The Illinois General Assembly created the Joint Committee on Administrative Rules (JCAR) in 1977 and delegated to it the responsibility of the legislative branch to ensure that the laws it enacts are appropriately implemented through administrative law. The specific duties and authorities of JCAR are outlined in the Illinois Administrative Procedure Act (IAPA), as is the Illinois rulemaking process.

RESPONSIBILITIES

The Committee's principal programs and activities include:

- *Review of general rulemaking.* In the course of this review, JCAR seeks to facilitate involvement by the affected public and to make the review process a timely and efficient one that assists State agencies in their goal of enacting the best administrative law possible.
- *Review of emergency and preemptory rulemakings* to ensure that they are justifiable within the IAPA's limitations on these types of rulemakings. Emergency and preemptory rulemakings are not subject to the IAPA's public comment period, and thus should be used conservatively.
- *Review of existing agency rules and policies* to determine if they have been properly promulgated, are unauthorized or unreasonable, or result in serious negative impact on the citizens of this State. These reviews can be undertaken upon JCAR's own initiative or in response to a complaint from the public.
- *Public Act review* to determine the necessity for new or amendatory rulemaking in response to legislative changes. JCAR devises a list of laws it believes may generate rulemaking activity, shares that list with the agencies, and monitors agency activity to determine if appropriate action is taken.
- *Legislative activities.* JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations.
- *Public information.* JCAR provides information on rules and the rulemaking process to legislators and the public through several conduits. First, JCAR publishes *The Flinn Report: Illinois Regulation*, a free weekly newsletter that summarizes State agency rulemaking activities. The newsletter is used by many as an alternative to subscribing (\$290/yr.) to the *Illinois Register*. The newsletter highlights the major issues; the reader can then seek a copy of the specific rulemaking or further information from the proposing agency. Second, JCAR has created and maintains, on the Legislative Information System's computers, the *Admin*

istrative Code database. The database is used in the publishing of the *Code* by the Secretary of State's Index Department and by private publishers who have been licensed to use the database. The *Illinois Register* is also now being published from the database. State agencies can access the database by downloading their Parts for use on their PCs or through LIS connections. Eventually, this database will make on-line access to both the *Code* and the *Register* possible for public users of LIS. Third, JCAR staff is always available to respond to inquiries from General Assembly members and the public. (For information, or to be added to the *Flinn Report* mailing list, call 217/785-2254.)

THE REVIEW PROCESS

The JCAR membership meets at least once each month to consider an agenda that generally includes from 50 to 100 separate rulemakings by State agencies. In a year's time, JCAR will review approximately 20,000 pages of rule. The IAPA dictates that the Committee's analysis of rulemakings be based on such concerns as statutory authority and legislative intent; necessity of the regulation; economic impact on State government and the affected public; completeness and appropriateness of standards to be relied upon in the exercise of agency discretion; effect on local government through the creation of a mandate; adherence to IAPA rulemaking requirements; and form.

JCAR's review of agency regulatory proposals is predominantly substantive. Its major concern is that statutory law is applied fairly and consistently, creating as little paperwork and economic burden for the affected public as is possible. The Committee serves as the final avenue for input from the public before a rulemaking is formally adopted. Recommendations from the public are always welcome and are actively sought. The Committee recognizes that no one is as qualified to comment on the appropriateness and practicality of a proposed regulation as the individual whose activities or business practices will be affected by that regulation. Comment on any proposed or existing State regulation can be submitted to the Committee at 700 Stratton Building, Springfield IL 62706, or by calling 217/785-2254.

JCAR's perusal of agency rulemakings serves a technical purpose as well. The various rulemakings of the State agencies collectively comprise the *Illinois Administrative Code*. In giving a final technical review to each agency proposal, JCAR, along with the Secretary of State's Index Department, strives to achieve some degree of consistency among the individual agencies' portions of the *Code*, and to make the *Code* as readable and understandable for the public as possible.

ANNUAL REPORT

This Report covers 6 years--1991 through 1996. The fiscal restraints under which the State has operated for the past few years have resulted in a reduction in JCAR staffing. The staff has had to give first priority to preparing JCAR members for the monthly rules reviews, and second to responding to the requests of General Assembly members and the public. Preparation of these reports has been accomplished in whatever time has remained after JCAR's statutory mandates have been fulfilled.

The narratives of JCAR activity during 1991 through 1996, as well as the statistical summaries of the rulemaking activities of State agencies, are separated by year. Summaries of legislation affecting JCAR are combined into reviews of the 87th, 88th and 89th G.A.s. This Report also includes a historical overview of rulemaking activity in Illinois, a review of pertinent court action, and the most recent version of the Illinois Administrative Procedure Act.

JCAR MEMBERSHIP

The Joint Committee on Administrative Rules consists of 12 legislators who are appointed by the General Assembly leadership. Membership is equally apportioned between the 2 houses and the 2 political parties. Two Co-chairs are selected by the Committee membership or appointed by the leaders, as provided by law. The Co-chairs are not members of the same house or the same party.

1991 - 1992 MEMBERS

Senator Emil Jones, Jr., Co-Chair
Senator Laura Donahue, Vice Chair
Senator Thomas Dunn
Senator Beverly Fawell
Senator William O'Daniel
Senator Harry "Babe" Woodyard

Representative Tom Ryder, Co-Chair
Representative Monroe Flinn, Secy.
Representative Larry Hicks
Representative Manny Hoffmann
Representative Ellis Levin
Representative Larry Wennlund

1993 - 1994 MEMBERS

Senator Donne E. Trotter, Co-Chair
Senator Beverly Fawell
Senator Karen Hasara
Senator William O'Daniel
Senator Steve Rauschenberger
Senator Jim Rea

Representative Tom Ryder, Co-Chair
Representative Bill Balthis
Representative Mary Lou Cowlshaw
Representative Monroe Flinn
Representative Barbara Giolitto
Representative Larry Hicks

1995 - 1996 MEMBERS

Senator Donne E. Trotter, Co-Chair
Senator J. Bradley Burzynski
Senator Beverly Fawell
Senator William L. O'Daniel
Senator Steve Rauschenberger
Senator Jim Rea

Representative Tom Ryder, Co-Chair
Representative Bill Balthis
Representative Mary Lou Cowlshaw
Representative Charles Hartke
Representative Phil Novak
Representative Larry Woolard

FORMER MEMBERS

Arthur L. Berman
Prescott E. Bloom
Glen L. Bower
Jack E. Bowers
Woods Bowman
John W. Countryman
John Cullerton
Michael Curran
Richard M. Daley
Vince Demuzio
James H. Donnewald
Jim Edgar
James Gitz
Alan J. Greiman

Kenneth Hall
Carl E. Hawkinson
Jeremiah E. Joyce
Douglas N. Kane
Doris Karpel
Richard Kelly, Jr.
Bob Kustra
Thaddeus "Ted" Lechowicz
Larry Leonard
Richard Luft
John W. Maitland, Jr.
Lynn Martin
John M. Matejcek
Roger McAuliffe

Thomas J. McCracken, Jr.
A. T. "Tom" McMaster
Myron J. Olson
David J. Regner
Jim Reilly
Philip J. Rock
George Sangmeister
Frank D. Savickas
Sam Vinson
Richard A. Walsh
Robert C. Winchester
Kathleen Wojcik
Harry "Bus" Yourell

ILLINOIS RULEMAKING PROCESS

Law basically exists in 4 forms: constitutional law, statutory law, administrative law and case law. Constitutional law creates broad guidelines. Legislation creates specific restrictions, authorities and programs. Administrative law adds the detail often necessary to implement statutory law. If these 3 categories of law do not sufficiently address all the variables, case law evolves.

In 1975, the Illinois General Assembly enacted the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100] to create a procedure through which administrative agencies would exercise the authority delegated to them by the legislature to create administrative law through the adoption of agency regulations. In 1977, the IAPA was amended to add a process by which the General Assembly would oversee the exercise of this delegated authority through the Joint Committee on Administrative Rules (JCAR), a service agency of the General Assembly.

Rules of an administrative agency are only valid and enforceable after they have been through the rulemaking process prescribed in the IAPA. Rules are for the purpose of interpreting or implementing provisions of a statute and may not actually expand or limit the scope of the statute.

TYPES OF RULEMAKINGS

Proposed Rules. These can be new rules or amendatory rulemakings. Frequently this is referred to as "regular rulemaking". A 2-step (First Notice and Second Notice) process is followed, requiring from 90 - 365 days. Aside from the basic 90 days, the agency basically controls the timing. Both the general public and the General Assembly, through JCAR, can have input prior to adoption.

Emergency Rules. Rules are effective immediately upon the agency filing them with the SOS. These rules can be developed unilaterally by the agency; JCAR reviews after the rules are adopted. An emergency rulemaking lasts 150 days unless an earlier date is specified. Emergency rulemaking can only be used if the agency finds a threat to the public interest, safety or welfare exists that the rulemaking will address.

Peremptory Rules. The IAPA provides for the immediate adoption of a rule which is required as a result of a federal law, federal rule, collective bargaining agreement, or a court order under conditions that preclude discretion by the agency concerning the rule's content. Peremptory rules are effective upon filing with the SOS or on the date required by the federal law, federal rule or court order. JCAR reviews these rules after their adoption for proper use of the procedure.

Exempt or Identical in Substance Rules. The IAPA and the Environmental Protection Act create a special process through which PCB can adopt environmental regulations that are identical in substance to federal regulations that the State is required to adopt and enforce. These rulemakings are reviewed by JCAR, after adoption, for proper use of the exempt process.

Required Rulemaking. These are rules of an agency that can be adopted unilaterally by the agency by filing with the SOS. Examples are organization charts, principal address, Freedom of Information Act information, hearing officer qualifications, etc.

THE PROCESS

Drafting of Rules. Administrative rules are drafted by State agencies; there is no central drafting bureau as for statutes. The involvement of the public in the initial drafting is at the discretion of the agency; however, the IAPA encourages early public involvement and now requires agencies to semiannually publish a Regulatory Agenda indicating, to the best of the agency's knowledge, the scope of the next 6 months' rulemaking activity.

First Notice. The First Notice period commences upon publication of an agency's Notice of Rulemaking in the *Illinois Register*. First Notice lasts a minimum of 45 days and terminates when the agency files with JCAR, commencing the Second Notice period. The only limitation is that a rulemaking expires if not adopted within 1 year after commencement of First Notice.

During this time, the rules are also sent to DCCA to determine possible impact on small business. This 45 day period is designed for the receipt and evaluation of public comment. A public hearing may or may not be held during this period. The agency can volunteer to hold a hearing or must conduct one at the request of the Governor, JCAR, an association representing over 100 persons, 25 individuals, or a local government. Requests for hearing must be filed within 14 days after publication of the First Notice.

Second Notice. Second Notice commences upon the agency's filing of the Second Notice with JCAR and lasts for a maximum of 45 days, unless extended for an additional 45 days by mutual agreement of JCAR and the agency. During the Second Notice Period, legislative review of the rules is conducted first by the JCAR staff and then at a meeting of the legislative members. JCAR reviews the proposed rules for statutory authority, propriety, standards for the exercise of discretion, economic effects, clarity, procedural requirements, technical aspects, etc.

During the JCAR review, JCAR and the agency can agree to modifications in the rulemaking that are adopted through written JCAR Agreements. That Agreements are appended to the Certificate of No Objection issued by JCAR at its regular meeting, or are still applicable if no Certificate is issued but the agency proceeds to adopt. If the agency does not choose to modify a rulemaking or if policy differences cannot be resolved during the review process, JCAR can take one of several actions.

JCAR Motions.

Certificate of No Objection. With the Certificate, the agency can adopt the rules at any time by filing them with the SOS for publication in the *Illinois Register*.

Recommendation. (Issued along with a Certificate of No Objection) The agency must respond to the Recommendation in writing within 90 days and can modify or withdraw the rule in response

to a JCAR Recommendation. (After going to Second Notice, the agency cannot unilaterally modify/withdraw a rulemaking.) However, the agency can also adopt the rules with no changes at anytime after receipt of the Certificate of No Objection.

Objection. An agency has to respond to an Objection in writing within 90 days, but after responding can proceed to adopt. The agency can modify or withdraw in response to a JCAR Objection or adopt the rules without changes. JCAR Agreements still apply.

Filing Prohibition/Suspension. If JCAR determines that a rulemaking constitutes a threat to the public interest, safety or welfare, the members can, by a 3/5 (8 members) vote, prohibit filing of a proposed rulemaking (or suspend an emergency rulemaking). As a result, the proposed rulemaking may not be accepted for filing by the Secretary of State or enforced by the agency, or an emergency rule that has already been adopted becomes null and void, for a period of 180 days. A prohibition or suspension lasts for a maximum of 180 days, within which the JCAR action may be rescinded if the agency offers to withdraw or modify the rulemaking. If no modifications or offer to withdraw are forthcoming from the agency, JCAR is to cause a Joint Resolution to be introduced in the General Assembly through which the General Assembly may permanently continue the prohibition/suspension.

PUBLIC NOTIFICATION

Illinois Register is the official State publication through which the public is informed of rulemaking activity. The *Illinois Register* is published by the Secretary of State every Friday, from the JCAR/LIS database, and contains First Notice publication of rulemaking proposals, JCAR actions, notices of final adoption of rulemakings, Regulatory Agendas (in January and July), Executive Orders and Proclamations, and indexes to the current and previous issues. Over the course of a year, the *Register* can contain almost 25,000 pages and can be ordered from the Secretary of State for \$290/year. The *Register* is currently available electronically through Westlaw.

The Flinn Report: Illinois Regulation is a 4-6 page weekly publication by JCAR that summarizes the rulemaking activity depicted in the matching issue of the *Illinois Register*. The *Flinn Report* is mailed free of charge to anyone who requests it.

Illinois Administrative Code. The compilation of all agency rules is known as the *Illinois Administrative Code*. The *Code* is larger than the Illinois Compiled Statutes. The *Code* is maintained electronically by JCAR/LIS. That database is used by the Secretary of State and West Publishing to publish the *Code* on CDROM. A hard copy version is published by Barclay's Law Publishers. The Barclay's version of the *Code* is available on line through Lexis. Several other publishers have been licensed to publish specific portions of the *Code* from the database. JCAR provides weekly updates to all publishers who contract for this service.

Both the *Register* and the *Code* are available on the LIS system and, through the State computer center, to attached libraries.

As both the *Register* and *Code* have been placed in the public domain, anyone who wants to create their own database or source material can publish. However, the database is owned by the General Assembly and to use it private publishers contract with JCAR.

Great strides in making both the *Register* and the *Code* more accessible have been accomplished in the past few years.

PUBLIC PARTICIPATION

One of the main reasons the IAPA was enacted was to give the public input into the regulatory process. Any interested person can contact an agency during the First Notice period to record their position on a rulemaking proposal. The IAPA specifically states that the agency can modify the rulemaking in response to public comment before going to Second Notice. Additionally, several agencies consult with their identified interest groups during the pre-First Notice drafting process.

When the rulemaking goes to Second Notice, JCAR receives a copy or summary of all written comment submitted to the agency. In addition, the public can contact JCAR directly, and frequently does so if the agency refused to modify in response to public comment, or if they discovered the existence of the proposal too late for the First Notice public comment period.

Public comment is vital to the JCAR review process. Frequently, it is only through this comment that the Committee can fully recognize the effect of a rule on the individual, business or local government that has to adhere to it on a daily basis.

The public can also lodge complaints about existing rules outside the process for adopting and amending rules. Agencies are required to allow the public to suggest rule revisions. Additionally, JCAR can open an investigation into an existing rule on its own volition or based on public complaint.

1991

GENERAL RULEMAKING

In 1991, the Joint Committee reviewed 523 rulemakings, 432 of which were general rulemakings, 65 were emergency rulemakings, 7 were peremptory rulemakings and 19 were Pollution Control Board's exempt rulemakings. Of these 523, JCAR voted one Prohibition, 11 Recommendations, 12 Objections against general rulemakings; 1 Recommendation and 7 Objections against emergency rulemakings.

The Committee voted a Prohibition to DCFS' rulemaking that would have amended the definition of a "neglected child". The rulemaking specified that treatment through spiritual means by relying upon prayer alone is not a substitute for medical care. The federal Department of Health and Human Services (HHS) was pressuring DCFS to amend their definition of "neglected child" to include such language. Failure on DCFS' part could have resulted in the loss of \$1.5 million of grant money. The Abused and Neglected Child Reporting Act clearly states that a child is *not* considered abused when the parents rely on spiritual means through prayer alone for treatment or cure of disease or remedial care. The conflict between the State law and the proposed rule prompted the Prohibition at the 9/17 meeting. They noted that DCFS had exceeded its statutory authority by expanding the definition of "neglected child". JCAR lifted the Filing Prohibition at the October meeting. DCFS, HHS and the Christian Scientists' public interest group agreed to compromise language. DCFS filed an emergency rulemaking with the compromise language in order to meet HHS' deadline for grant fund eligibility.

DOC proposed rules for the issuance of permits that would control certain wildlife, that is, wildlife that causes damage to property or is a risk to human health or safety. The Wildlife Code includes standards for the issuance of these permits, but also allows DOC to set its own standards. DOC's rulemaking contained standards that were different from the statutory standards. The apparent conflict between the rule and the Statute resulted in discussions with JCAR staff. DOC contended that it had a right to propose further standards in rules because the statute authorizes DOC to set forth applicable regulations for the issuance of permits, in addition to the criteria for the issuance of permits set forth in the Statute. JCAR interpreted this duality to mean that DOC could establish additional requirements for the issuance of permits by rule. The interpretation that DOC chose would allow DOC to institute two separate sets of standards for the issuance of permits. JCAR decided not to pursue action on this rulemaking originally scheduled for consideration at the February meeting. The February meeting was not held, due to fiscal shortages. By the time the March meeting had arrived, the Second Notice period had expired, and DOC adopted the rulemaking.

PCB filed a package of rulemakings establishing standards in setback zones or regulated areas pertaining to groundwater. These standards were authorized by the Groundwater Protection Act. Staff questioned PCB's authority to regulate agricultural facilities noting that these facilities were already regulated by DOA. PCB agreed that DOA is responsible for regulating the construction and storage of hazardous materials at agricultural facilities, but stated that it was authorized to implement rules pertaining to the reporting of spills, closure requirements and remedial responses

at agrichemical facilities. JCAR objected to these rules because an undue economic burden on small businesses (agrichemical facilities) was created by these rules. PCB refused to modify or withdraw the rules noting that the statute clearly states that the Board is obligated to prescribe standards and requirements for “storage and related handling of pesticides and fertilizers at a facility for the purpose of commercial application.” The Board adopted these rulemakings on 1/10/92 and JCAR took no further action on this package of rulemakings.

1991
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Abandoned Mined Lands Reclamation Council	1
Department on Aging	2
Department of Agriculture	2
Department of Alcoholism and Substance Abuse	6
Attorney General	1
Commissioner of Banks and Trust Companies	3
Department of Central Management Services	14
Department of Children and Family Services	6
Department of Commerce and Community Affairs	16
Illinois Commerce Commission	16
Illinois Community College Board	2
Department of Conservation	43
Department of Corrections	4
State Board of Education	5
Consortium for Educational Opportunity	1
State Board of Elections	2
Emergency Services & Disaster Agency	1
Department of Employment Security	14
Environmental Protection Agency	4
Department of Financial Institutions	1
State Fire Marshal	5
Health Care Cost Containment Council	3
Health Facilities Planning Board	3
Historic Preservation Agency	2
Housing Development Authority	2
Industrial Commission	1
Department of Insurance	12
Department of Labor	2
Local Governmental Law Enforcement Officers Training Board	1

Local Records Commission	1
Department of Mental Health and Developmental Disabilities	6
Department of Mines and Minerals	16
Department of Nuclear Safety	2
Pollution Control Board	37
Department of Professional Regulation	13
Department of Public Aid	78
Department of Public Health	28
Illinois Racing Board	17
Department of Rehabilitation Services	18
State Employees Retirement System	1
Teacher's Retirement System	1
Department of Revenue	25
Commissioner of Savings and Residential Finance	9
Savings and Loan Advisory Board	2
Secretary of State	14
Department of State Police	1
State Police Merit Board	1
Student Assistance Commission	5
Department of Transportation	32
Treasurer	2

TOTAL

484

1991
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Abandoned Mined Lands Reclamation Council	1
Department on Aging	4
Department of Agriculture	2
Department of Alcoholism and Substance Abuse	6
Attorney General	1
Auditor General	1
Carnival-Amusement Ride Safety Board	1
Department of Central Management Services	12
Department of Children and Family Services	2
Department of Commerce and Community Affairs	18
Illinois Commerce Commission	14
Illinois Community College Board	1
Comptroller	2
Department of Conservation	39
Department of Corrections	4
Criminal Justice Information Authority	1
State Board of Education	5
State Board of Elections	3
Department of Employment Security	11
Environmental Protection Agency	1
Department of Financial Institutions	1
State Fire Marshal	2
Health Care Cost Containment Council	1
Board of Higher Education	1
Historic Preservation Agency	2
Housing Development Authority	2
Industrial Commission	3
Department of Insurance	10
Department of Labor	1

Local Records Commission	1
Department of Mental Health and Developmental Disabilities	8
Department of Mines and Minerals	16
Department of Nuclear Safety	8
Pollution Control Board	24
Department of Professional Regulation	12
Department of Public Aid	67
Department of Public Health	29
Illinois Racing Board	20
Department of Rehabilitation Services	20
State Employees Retirement System	1
Teacher's Retirement System	1
Department of Revenue	34
Commissioner of Savings and Residential Finance	2
Savings and Loan Advisory Board	2
Secretary of State	7
Department of State Police	1
State Police Merit Board	1
Student Assistance Commission	1
Department of Transportation	23
Treasurer	2

TOTAL

432

1991
GENERAL RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Prohibit
Department of Children and Family Services	0	0	1
Illinois Commerce Commission	1	0	0
Department of Commerce and Community Affairs	2	2	0
Comptroller	0	1	0
Department of Conservation	1	0	0
Department of Mines and Minerals	1	0	0
Department of Nuclear Safety	1	0	0
Pollution Control Board	0	4	0
Department of Public Aid	1	4	0
Department of Public Health	2	0	0
Department of Revenue	1	1	0
Treasurer	1	0	0
TOTALS	11	12	1

1991
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Incomplete Rules	2	18%
Implementation of Policy Prior to Adopting Rules	1	8%
Lack of Standards for Agency Discretion	1	8%
Lacks Justification and Rationale	1	8%
Statutory Authority/Legislative Intent	1	8%
Economic Impact	6	50%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Incomplete Rules	1	9%
Need for JCAR to Monitor the Issue	1	9%
Procedural	3	27%
Need for Additional Rulemaking	4	37%
Need for Statutory Revision/Clarification	1	9%
Lacks Justification/Rationale	1	9%

Basis for Filing Prohibition	Number of Filing Prohibitions	Percentage of Total
Statutory Authority/Legislative Intent	1	100%

1991

———— *EMERGENCY RULEMAKING* ————

DPA filed an emergency rule initiating 2 General Assistance programs. The lack of clarity in the definition of “not employable” in the rulemaking prompted an objection to the emergency rule at the 11/19/91 JCAR meeting. DPA responded to the Objection by agreeing to amend the permanent rulemaking by defining “not employable” to also include persons who cannot read English at a 5.9 grade level.

1991
EMERGENCY RULEMAKINGS

ADOPTED BY THE AGENCY

Agencies	Number of Rulemakings
Department on Aging	3
Department of Agriculture	1
Department of Alcoholism and Substance Abuse	1
Department of Central Management Services	3
Department of Children and Family Services	4
Department of Commerce and Community Affairs	2
Illinois Commerce Commission	1
Department of Conservation	4
Department of Labor	1
Department of Mental Health and Developmental Disabilities	1
Department of Mines and Minerals	1
Motor Vehicle Theft Prevention Council	1
Department of Professional Regulation	5
Department of Public Aid	19
Department of Public Health	8
Illinois Racing Board	2
Department of Rehabilitation Services	1
Department of Revenue	3
Commissioner of Savings and Residential Finance	1
Secretary of State	3
Department of State Police	1
Student Assistance Commission	5
TOTAL	71

1991
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

Agencies	Number of Rulemakings
Department on Aging	2
Department of Agriculture	1
Department of Alcoholism and Substance Abuse	1
Department of Central Management Services	2
Department of Children and Family Services	4
Department of Commerce and Community Affairs	2
Illinois Commerce Commission	2
Department of Conservation	4
Gaming Board	1
Department of Labor	1
Department of Mental Health and Developmental Disabilities	2
Department of Mines and Minerals	1
Motor Vehicle Theft Prevention Council	1
Department of Professional Regulation	4
Department of Public Aid	22
Department of Public Health	8
Illinois Racing Board	2
Department of Rehabilitation Services	1
Department of Revenue	1
Student Assistance Commission	3
TOTAL	65

1991
EMERGENCY RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Central Management Services	0	1	0
Department of Children and Family Services	0	1	0
Department of Professional Regulation	1	0	0
Department of Public Aid	0	4	0
Department of Public Health	0	1	0
TOTALS	1	7	0

1991
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Type of Objection	Number of Objections	Percentage of Total
No Legitimate Emergency Existed	3	44%
Economic Impact	1	14%
Incomplete Rulemaking	1	14%
More than 1 Emergency Rule in a 24 Month Period	1	14%
Retroactivity of Rule	1	14%
Type of Recommendation	Number of Recommendations	Percentage of Total
No Legitimate Emergency Existed	1	100%

1991

PEREMPTORY & EXEMPT

RULEMAKING

In 1991, agencies used peremptory rulemaking procedures 7 times and the Pollution Control Board used exempt rulemaking 19 times. The Department of Agriculture adopted 4 regulations and DPA one regulation that were identical to federal regulations and CMS implemented 2 collective bargaining agreements. The IAPA allows regulations required by federal law/regulations, court orders and collective bargaining agreements to bypass the public and JCAR comment periods that are a part of regular rulemaking procedures, because the agency has no discretion as to the language of the rule and could not make changes even if requested to do so.

Through the exempt rulemaking procedure that statutorily allows PCB to abbreviate the rulemaking process to adopt rules identical in substance to federal regulations that the State is required to adopt, PCB adopted 19 rulemakings in 1991.

JCAR found none of these uses of exempt and peremptory rulemaking to be actionable.

1991
PEREMPTORY & EXEMPT RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department of Agriculture	4
Department of Central Management Services	2
Pollution Control Board	19
Department of Public Aid	1
TOTAL	26

1991
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department of Agriculture	4
Department of Central Management Services	3
Pollution Control Board	19
Department of Public Aid	1
TOTAL	27

1991
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

Agency	Number of Rulemakings
None	
TOTAL	0

1991
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Recommendation	Number of Recommendations	Percentage of Total
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None

AGENCY RESPONSE TO 1991 JCAR ACTION

Agency	Appropriate Response	Inappropriate Response
<i>OBJECTIONS</i>		
Department of Central Management Services	1	0
Department of Children and Family Services	1	0
Department of Commerce and Community Affairs	0	2
Comptroller	0	1
Pollution Control Board	0	4
Department of Public Aid	1	7
Department of Public Health	0	1
Department of Revenue	0	1
Totals	3	16
Percentage	16%	84%

<i>RECOMMENDATIONS</i>		
Department of Commerce and Community Affairs	2	0
Department of Conservation	0	1
Illinois Commerce Commission	1	0
Department of Mines and Minerals	1	0
Department of Nuclear Safety	1	0
Department of Professional Regulation	1	0
Department of Public Aid	0	1
Department of Public Health	2	0
Department of Revenue	0	1
Treasurer	0	1
Totals	8	4
Percentage	67%	33%

<i>FILING PROHIBITIONS</i>		
Department of Children and Family Services	1	0
Totals	1	0
Percentage	100%	0%

1992

GENERAL RULEMAKING

In 1992, the Joint Committee reviewed 649 rulemakings, 514 of which were general rulemakings, 97 were emergency rulemakings, 9 were peremptory rulemakings and 29 were exempt rulemakings. Of those 645, JCAR voted action on 33 rulemakings: 14 Recommendations, 4 Objections and 1 Filing Prohibition were voted against general rulemakings; 7 Recommendations, 5 Objections, and 1 Suspension against emergency rulemakings; and 1 Recommendation against a peremptory rulemaking.

JCAR voted a Filing Prohibition at the January meeting against a Department of Insurance rulemaking that was proposed to meet an OBRA90 requirement. The rulemaking was to incorporate the National Association of Insurance Commissioner's model regulation prohibiting insurance agents' practice of "churning". JCAR determined that the rulemaking severely limited the insurance agents' commission earning power and potentially cost elderly people an opportunity to purchase this type of insurance. JCAR suggested that DOI first identify those agents guilty of churning, then curtail their activities through rules. DOI responded by modifying the rulemaking and JCAR withdrew its Filing Prohibition.

A Department of Labor rulemaking imposed federal private sector OSHA HIV/AIDS protection regulations on public sector employees of Illinois. Although DOL believed that the rulemaking was mandatory due to a State Act requiring adoption of OSHA regulations in DOL's rules, JCAR suggested that DOL may have interpretive powers and flexibility over the implementation of OSHA regulations. According to the Department of Commerce and Community Affairs, this rulemaking amounted to an unfunded State Mandate which, it estimated, would cost units of local government \$8.8 million. At its December meeting, JCAR voted to object to this rulemaking, noting that the proposed provisions were economically overburdensome on units of local government. DOL responded by refusing to modify the rulemaking and reiterated its reliance requirements set out in State and federal law.

JCAR mediated a dispute between the Department of Public Health and Jet Inc. distributors. The dispute centered on an 1983 incorporation by reference found in DPH's rules that also specified that septic systems bear a seal by the National Sanitation Foundation. NSF was refusing to give seals to a Jet Aerobic Treatment Plant because the unit had reportedly failed field tests at the Foundation's headquarters in Michigan. Without the seals, Jet, an Ohio based corporation, would be eliminated from selling the septic systems in Illinois. Illinois distributors of the Jet aerobic treatment plants were left with a supply of septic systems that they could not sell, because the systems could not bear the NSF seal. No mechanism for appealing the Department's decision was available to these distributors. After several months of mediation involving distributors, DPH staff, JCAR staff, and the Governor's office, DPH agreed to issue an emergency rulemaking that allowed distributors of the plants to install any equipment that they had on hand on the date that DPA issued its notice to local health officials precluding installation of the equipment and that specified that newly tested equipment would need to meet NSF standard 40 (1990).

1992
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Abandoned Mined Lands Reclamation Council	2
Department on Aging	5
Department of Agriculture	18
Department of Alcoholism and Substance Abuse	4
Attorney General	1
Commissioner of Banks and Trust Companies	4
Capital Development Board	2
Carnival-Amusement Ride Safety Board	2
Department of Central Management Services	19
Department of Children and Family Services	12
Department of Commerce and Community Affairs	12
Illinois Commerce Commission	16
Illinois Community College Board	3
Comptroller	1
Department of Conservation	38
Department of Corrections	5
Criminal Justice Information Authority	2
Development Finance Authority	2
Planning Council on Developmental Disabilities	2
State Board of Education	9
Educational Labor Relations Board	2
Emergency Management Agency	2
Department of Employment Security	8
Department of Energy and Natural Resources	1
Environmental Protection Agency	14
Farm Development Authority	1
Department of Financial Institutions	4
State Fire Marshal	6
Guardianship and Advocacy Commission	1
Health Care Cost Containment Council	2
Health Facilities Planning Board	4
Board of Higher Education	1
Historic Preservation Agency	2
Housing Development Authority	5

Department of Human Rights	1
Industrial Commission	2
Department of Insurance	13
Joint Committee on Administrative Rules	1
Department of Labor	9
Legislative Space Needs Commission	2
Local Governmental Law Enforcement Officers Training Board	1
Lottery	3
Department of Mental Health and Developmental Disabilities	7
Department of Mines and Minerals	32
Motor Vehicle Theft Prevention Council	2
Department of Nuclear Safety	10
Pollution Control Board	23
Prairie State 2000 Authority	1
Department of Professional Regulation	16
Department of Public Aid	84
Office of Public Counsel	1
Department of Public Health	46
Illinois Racing Board	20
Department of Rehabilitation Services	14
Teacher's Retirement System	2
Department of Revenue	9
Rural Bond Bank	1
Commissioner of Savings and Residential Finance	4
Secretary of State	13
State Employees Retirement System	1
Department of State Police	3
State Police Merit Board	2
Student Assistance Commission	10
Department of Transportation	21
Treasurer	5
U of I Board of Trustees	1
Department of Veterans Affairs	5

TOTAL

577

1992
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Abandoned Mined Lands Reclamation Council	2
Department on Aging	6
Department of Agriculture	17
Department of Alcoholism and Substance Abuse	4
States Attorney's Appellate Prosecutor	1
Commissioner of Banks and Trust Companies	6
Capital Development Board	2
Carnival-Amusement Ride Safety Board	2
Department of Central Management Services	20
Department of Children and Family Services	14
Department of Commerce and Community Affairs	16
Illinois Commerce Commission	20
Illinois Community College Board	2
Department of Conservation	44
Department of Corrections	6
Development Finance Authority	3
State Board of Education	9
Educational Labor Relations Board	1
State Board of Elections	2
Emergency Management Agency	2
Department of Employment Security	9
Department of Energy and Natural Resources	1
Environmental Protection Agency	7
Department of Financial Institutions	4
State Fire Marshal	5
Governor's Purchased Care Review Board	1
Guardianship and Advocacy Commission	1
Health Care Cost Containment Council	1
Health Facilities Planning Board	2
Board of Higher Education	2

Historic Preservation Agency	2
Housing Development Authority	3
Department of Human Rights	2
Department of Insurance	11
Joint Committee on Administrative Rules	1
Department of Labor	5
Lieutenant Governor	1
Local Governmental Law Enforcement Officers Training Board	2
Lottery	1
Department of Mental Health and Developmental Disabilities	4
Department of Mines and Minerals	6
Motor Vehicle Theft Prevention Council	1
Department of Nuclear Safety	6
Pollution Control Board	20
Prairie State 2000 Authority	1
Department of Professional Regulation	15
Department of Public Aid	87
Office of Public Counsel	1
Department of Public Health	26
Illinois Racing Board	19
Department of Rehabilitation Services	9
Teacher's Retirement System	1
Department of Revenue	15
Rural Bond Bank	1
Commissioner of Savings and Residential Finance	4
Secretary of State	13
State Employees Retirement System	1
Department of State Police	3
State Police Merit Board	1
Student Assistance Commission	14
Department of Transportation	21
Treasurer	1
Department of Veterans Affairs	3
U of I Board of Trustees	1

TOTAL

514

1992
GENERAL RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Prohibit
Department on Aging	0	1	0
Department of Alcohol & Substance Abuse	1	1	0
Commissioner of Banks & Trust Companies	1	0	0
Department of Central Management Services	1	0	0
State Board of Education	2	0	0
Department of Insurance	0	0	1
Department of Labor	0	1	0
Department of Mental Health & Devel. Disabilities	1	0	0
Pollution Control Board	0	1	0
Department of Public Aid	4	0	0
Department of Public Health	3	0	0
Department of Rehabilitation Services	1	0	0
TOTALS	14	4	1

1992
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Filing Prohibition	Number of Prohibitions	Percentage of Total
Economic Impact	1	100%

Basis for Objection	Number of Objections	Percentage of Total
Failed to Adequately Consider Public Comment	1	25%
Economic Impact	2	50%
Incomplete Rulemaking	1	25%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Need for Additional Rulemaking	5	36%
Procedural	1	7%
Need for Statutory Revision/Clarification	4	29%
Delay Adoption Until Results of G.A. Activity Known	1	7%
Take No Action to Circumvent Legislative Intent	1	7%
Further Consideration of Public Comment	1	7%
Refrain from Rules that Fail to Meet Federal Requirements	1	7%

1992

EMERGENCY RULEMAKING

The Department on Aging adopted an emergency rulemaking that tightened eligibility requirements for the program and cut back its benefits. The Committee suspended the emergency rule, because it could increase the institutionalization of elderly people who were less likely to appeal because of infirmity. Furthermore, DOA did not take into account the long-term costs involved when cutbacks in preventative programs cause more people to become institutionalized. The Department's responded by agreeing to modify the rulemaking.

In November, the Committee voted an Objection to EPA's rulemaking concerning underground storage tanks payments, because the rulemaking resulted in a prioritization of claims for payment out of the Fund. The rulemaking subordinated some claims to others without providing an opportunity for those with subordinated claims to contest the placement. Discussions also revealed that the Fund was insufficient to pay all of the expected claims. JCAR objected to the rulemaking, because those whose claims were subordinated were denied due process. EPA responded by modifying the rulemaking.

1992
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

Agencies	Number of Rulemakings
Abandoned Mined Lands Reclamation Council	1
Department on Aging	5
Commissioner of Banks and Trust Companies	1
Carnival-Amusement Safety Board	1
Department of Central Management Services	7
Department of Children and Family Services	1
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	1
Department of Conservation	6
Department of Corrections	1
Educational Labor Relations Board	1
Department of Employment Security	2
Environmental Protection Agency	1
Department of Financial Institutions	1
Health Care Cost Containment Council	2
Health Facilities Planning Board	4
Housing Development Authority	2
Department of Insurance	1
Local Governmental Law Enforcement Officers Training Board	1
Department of Mental Health and Developmental Disabilities	8
Motor Vehicle Theft Prevention Council	1
Prairie State 2000 Authority	1
Department of Professional Regulation	2
Department of Public Aid	27
Department of Public Health	4
Illinois Racing Board	1
Department of Rehabilitation Services	6
Department of Revenue	2
Illinois Rural Bond Bank	1
Commissioner of Savings and Residential Finance	2
Secretary of State	2
Department of State Police	1
State Police Merit Board	1
Student Assistance Commission	2
Department of Transportation	1
TOTAL	102

1992
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

Agencies	Number of Rulemakings
Abandoned Mined Lands Reclamation Council	1
Department on Aging	6
Commissioner of Banks and Trust Companies	1
Carnival-Amusement Safety Board	1
Department of Central Management Services	6
Department of Children and Family Services	1
Department of Commerce and Community Affairs	1
Illinois Commerce Commission	1
Department of Conservation	5
Department of Corrections	1
Educational Labor Relations Board	1
Department of Employment Security	2
Environmental Protection Agency	1
Department of Financial Institutions	1
Health Facilities Planning Board	3
Housing Development Authority	2
Local Governmental Law Enforcement Officers Training Board	1
Department of Mental Health and Developmental Disabilities	8
Motor Vehicle Theft Prevention Council	1
Prairie State 2000 Authority	1
Department of Professional Regulation	3
Department of Public Aid	27
Department of Public Health	4
Illinois Racing Board	1
Department of Rehabilitation Services	6
Department of Revenue	1
Illinois Rural Bond Bank	1
Commissioner of Savings and Residential Finance	2
Secretary of State	1
Department of State Police	1
State Police Merit Board	1
Student Assistance Commission	3
Department of Transportation	1
TOTAL	97

1992
EMERGENCY RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department on Aging	1	1	1
Commissioner of Banks & Trust Companies	1	0	0
Department of Central Management Services	0	1	0
Educational Labor Relations Board	3	0	0
Environmental Protection Agency	1	1	0
Housing Development Authority	0	1	0
Department of State Police	0	1	0
State Police Merit Board	1	0	0
TOTALS	7	5	1

1992
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Suspension	Number of Suspensions	Percentage of Total
Economic Impact	1	100%

Basis for Objection	Number of Objections	Percentage of Total
Policy Not in Rules/Lack of Clarity	1	20%
Retroactivity	1	20%
No Legitimate Emergency Existed	1	20%
Unduly Limits Due Process Rights	1	20%
Procedural	1	20%

Basis for Recommendation	Number of Recommendations	Percentage of Total*
No Emergency	1	14%
Retroactivity	1	14%
Lack of Standards	1	14%
Further Consideration of Public Comment	1	14%
Need for Statutory Revision/Clarification	1	14%
Inappropriate Use of Emergency Budget Act Authority	1	14%
Further Statutory Action	1	14%

1992
PEREMPTORY & EXEMPT
RULEMAKING

The Department of Central Management Services did not follow procedures for its adoption of a peremptory rulemaking that was implementing a collective bargaining agreement. CMS had not yet executed the underlying collective bargaining agreement necessary for the adoption of a peremptory rulemaking. JCAR recommended that CMS take steps to make certain collective bargaining agreements have been executed prior to use of peremptory rulemaking in the future. CMS agreed to follow the Recommendation.

1992
PEREMPTORY & EXEMPT RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department of Agriculture	6
Department of Central Management Services	2
Pollution Control Board	29
Department of Public Aid	1
TOTAL	38

1992
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department of Agriculture	6
Department of Central Management Services	2
Pollution Control Board	29
Department of Public Aid	1
TOTAL	38

1992
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Central Management Services	1	0	0
TOTALS	1	0	0

1992
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Recommendation	Number of Recommendations	Percentage of Total
Untimely Use of Peremptory Rulemaking	1	100%

AGENCY RESPONSE TO 1992 JCAR ACTION

Agency	Appropriate Response	Inappropriate Response
<i>OBJECTIONS</i>		
Department on Aging	1	1
Department of Alcoholism & Substance Abuse	1	0
Department of Central Management Services	1	0
Environmental Protection Agency	1	0
Housing Development Authority	1	0
Department of Labor	0	1
Pollution Control Board	1	0
Department of State Police	1	0
Totals	7	2
Percentage	78%	22%

RECOMMENDATIONS

Department on Aging	1	0
Department of Alcoholism & Substance Abuse	1	0
Commissioner of Banks and Trust Companies	2	0
Department of Central Management Services	2	0
State Board of Education	0	2
Educational Labor Relations Board	2	1
Environmental Protection Agency	1	0
Department of Mental Health & Developmental Disabilities	1	0
Department of Rehabilitation Services	1	0
State Police Merit Board	0	1
Department of Public Aid	3	1
Department of Public Health	3	0
Totals	17	5
Percentage	77%	23%

AGENCY RESPONSE TO 1992 JCAR ACTION (Cont.)

Agency	Appropriate Response	Inappropriate Response
<i>PROHIBITIONS</i>		
Department of Insurance	1	0
Totals	1	0
Percentage	100%	0%

<i>SUSPENSIONS</i>		
Department on Aging	1	0
Totals	1	0
Percentage	100%	0%

1993

GENERAL RULEMAKING

In 1993, JCAR reviewed a total of 639 rulemakings, 484 of which were general rulemakings, 126 were emergencies, 9 were peremptories and 20 were exempt rulemakings. JCAR took the following actions: 4 Prohibitions, 9 Objections and 11 Recommendations to general rulemakings, 2 Suspensions, 4 Objections and 1 Recommendation against emergency rulemakings, and 1 Objection against a peremptory rulemaking.

By incorporating the 1991 Life Safety Code, OSFM proposed rules that could negatively impact day care homes and group day care homes. Day care homes or group day care homes are licensed by DCFS under its rules, but would have to meet OSFM fire safety standards set out in the 1991 Life Safety Code under this rulemaking. The Life Safety Code requires a staff ratio (adult to child) that is different than the ratio set out in the Child Care Act. OSFM would be also imposing stricter standards than those set by DCFS. OSFM expressed an unwillingness to respond to the issues involved or extend the rulemaking to the next meeting in order to allow time for further discussion. At the June meeting, JCAR voted a Filing Prohibition to the rulemaking based upon the conflicting nature of the regulations with the proposed incorporated materials, the Life Safety Code. In response to the Prohibition, OSFM worked with the day care industry, DCFS and JCAR to resolve the outstanding issues by revising the rulemaking to reflect the Child Care Act.

At its November meeting, JCAR voted a Filing Prohibition on a Department of Financial Institutions' rulemaking that created a different rate structure for individuals cashing Public Aid checks. The rulemaking violated legislative intent and imposed a negative economic impact on some currency exchanges, while creating revenues for others. The General Assembly had considered and rejected such a rate structure in a previous session of the legislature. JCAR found that DFI action went against the General Assembly's intent by attempting to do in a rulemaking what had been considered and rejected in legislation. For several months, the agency and JCAR were at an impasse. At its February meeting, JCAR voted to introduce a Joint Resolution to the General Assembly that would make the Filing Prohibition permanent. In March, JCAR members voted to delay filing the Joint Resolution until the new acting Director could become acquainted with the issues and determine what formal response DFI would make. In April of 1995, the acting Director agreed to withdraw the rulemaking in response to the Filing Prohibition, rendering further action unnecessary.

In December, JCAR objected to and prohibited filing of a rulemaking that created an unfair formula for determining rates that cable companies pay to electric companies for the use of utility poles. JCAR found that the rulemaking would be a hardship on cable television companies and would prove costly to cable customers. JCAR stated that the Prohibition would be withdrawn if a particular provision were removed from the formula. ICC responded in 1994 by removing the controversial language, and JCAR withdrew the Filing Prohibition.

JCAR moved a Filing Prohibition on a rulemaking that limited the number of persons to 3 who can hunt geese from a blind or pit. The Prohibition was voted based on the economic hardship that could

result on communities where goose, duck and coot hunting takes place. JCAR pointed out that the removal of the 3 person limit in recent legislation demonstrates that the 3 person limit in rules contradicts its legislative intent. DOC stated that when the rulemaking was proposed, the law still contained the 3 person restriction. The Prohibition was never filed with the Secretary of State because JCAR had specified in its motion that if DOC agreed to modify the rulemaking, which they did, no Prohibition would be filed.

According to Section 5-105 of the IAPA, JCAR is authorized to conduct reviews of existing rules. In July 1993, JCAR considered SBE's implementation of the Sprinkler Law. The review revealed a statutory requirement that schools constructed after 7/1/92 must maintain sprinkler systems that are installed according to SBE specifications. Although, the Sprinkler Law became effective on 7/1/92, SBE did not plan to propose rules implementing the Act for 18 - 24 months, noting that they wanted to propose sprinkler amendments when an update to the Life Safety Code was also planned. Absent rules, schools would be forced to follow the law without any formal rules. Rather than propose rules, SBE distributed a 2-page document summarizing its interpretation of some aspects of the law. This document set out guidelines that represented agency policy not in rules. Further difficulties were discovered when different NFPA sprinkler standards were noted. SBE's adopted rules specify compliance with 1966 standards and the guidelines specify compliance with 1989 standards. JCAR members requested that SBE propose rules implementing the Sprinkler Law as soon as possible, rather than wait until all provisions were ready for rules proposal. In response, SBE agreed to submit Sprinkler Law amendments rather than the combined draft rules.

1993
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	2
Department of Agriculture	17
Department of Alcoholism and Substance Abuse	1
Auditor General	1
Commissioner of Banks and Trust Companies	1
Capital Development Board	1
Carnival-Amusement Ride Safety Board	1
Department of Central Management Services	14
Department of Children and Family Services	13
Department of Commerce and Community Affairs	8
Illinois Commerce Commission	16
Illinois Community College Board	2
Community Development Finance Corporation	1
Comptroller	2
Department of Conservation	31
Department of Corrections	6
Criminal Justice Information Authority	2
State Board of Education	10
Educational Facilities	1
State Board of Elections	2
Emergency Management Agency	4
Department of Employment Security	13
Environmental Protection Agency	4
Farm Development Authority	1
Department of Financial Institutions	3
State Fire Marshal	1
Health Care Cost Containment Council	3
Health Facilities Planning Board	5
Board of Higher Education	1

Housing Development Authority	1
Department of Human Rights	1
Department of Insurance	15
Joint Committee on Administrative Rules	7
Lieutenant Governor	1
Liquor Control Commission	1
Department of Mental Health and Developmental Disabilities	2
Department of Mines and Minerals	3
Motor Vehicle Theft Prevention Council	2
Nature Preserves Commission	1
Department of Nuclear Safety	15
Pollution Control Board	22
Department of Professional Regulation	19
Department of Public Aid	65
Department of Public Health	53
Illinois Racing Board	25
Department of Rehabilitation Services	31
Teacher's Retirement System	1
Department of Revenue	20
Commissioner of Savings and Residential Finance	1
Secretary of State	21
State Labor Relations Board	4
Department of State Police	2
State Police Merit Board	1
State Universities Civil Service System	1
Student Assistance Commission	15
Toll Highway Authority	2
Department of Transportation	28
Treasurer	7
U of I Board of Trustees	1

TOTAL

535

1993
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	3
Department of Agriculture	16
Auditor General	1
Capital Development Board	1
Carnival-Amusement Ride Safety Board	1
Department of Central Management Services	11
Department of Children and Family Services	6
Department of Commerce and Community Affairs	4
Illinois Commerce Commission	13
Illinois Community College Board	3
Planning Council on Developmental Disabilities	2
Comptroller	2
Department of Conservation	23
Department of Corrections	3
Criminal Justice Information Authority	2
State Board of Education	4
Educational Facilities	1
Educational Labor Relations Board	1
Department of Employment Security	11
Environmental Protection Agency	9
Farm Development Authority	2
Department of Financial Institutions	2
State Fire Marshal	4
Health Care Cost Containment Council	3
Health Facilities Planning Board	1
Board of Higher Education	1
Housing Development Authority	1
Department of Human Rights	1
Industrial Commission	2

Department of Insurance	12
Joint Committee on Administrative Rules	7
Legislative Space Needs Commission	2
Department of the Lottery	1
Department of Mental Health and Developmental Disabilities	3
Department of Mines and Minerals	28
Department of Nuclear Safety	6
Pollution Control Board	17
Department of Professional Regulation	17
Department of Public Aid	58
Department of Public Health	62
Illinois Racing Board	17
Department of Rehabilitation Services	32
Department of Revenue	19
Commissioner of Savings and Residential Finance	3
Secretary of State	14
State Labor Relations Board	4
Department of State Police	2
State Police Merit Board	2
Student Assistance Commission	13
Toll Highway Authority	1
Department of Transportation	22
Treasurer	7
U of I Board of Trustees	1

TOTAL

484

1993
GENERAL RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Prohibit
Carnival-Amusement Safety Board	1	0	0
Illinois Commerce Commission	0	1	1
Department of Conservation	0	0	1
Department of Financial Institutions	0	0	1
State Fire Marshal	0	0	1
Department of Insurance	0	1	0
Department of Mental Health & Develop. Disabilities	2	0	0
Pollution Control Board	0	1	0
Department of Public Aid	3	1	0
Department of Public Health	3	3	0
Racing Board	0	1	0
Department of Rehabilitation Services	1	0	0
Department of Transportation	1	0	0
U of I Board of Trustees	0	1	0
TOTALS	11	9	4

1993
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Filing Prohibition	Number of Prohibitions	Percentage of Total
Statutory Authority/Legislative Impact	1	25%
Legislative Intent/Economic Impact	1	25%
Economic Impact	2	50%

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Impact	2	22%
Legislative Intent/Economic Impact	1	11%
Economic Impact	4	45%
Procedural	1	11%
Conflict with Other Rules	1	11%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Procedural	3	27%
Insure that Transplant Procedures Not Be Denied to Medicaid Clients Because of Arbitrary Limits on Reimbursement	1	9%
Further Rulemaking	5	46%
Further Consideration of Public Comment	2	18%

1993

EMERGENCY RULEMAKING

The Illinois Racing Board proposed a rulemaking allowing IRB to collect the admission fee (\$1.00 - county; \$1.00 - city) from OTBs. IRB would then distribute the fee to local governments, but, initially would keep 2% of the fees to cover its administrative costs. JCAR objected to this rulemaking because IRB did not possess statutory authority to keep a portion of the fee for its expenses. The Board stated that the Revenue Code granted it the necessary authority to collect the funds. However, DOR could not offer a citation to this statutory provision. IRB maintained that its authority was sufficient, but JCAR recommended that IRB seek statutory authority to collect such fees for its expenses. In the permanent replacement rulemaking, JCAR once again objected to IRB's collection of this administrative fee. In response to the Objection on the proposed rulemaking, IRB modified the rulemaking by removing its procedure for fee collection.

JCAR suspended two emergency rulemakings on the basis of legislative intent. Reimbursement payments to facilities caring for developmentally disabled persons were being reduced, but the reduction conflicted with the legislative intent in PA 88-88. The rulemakings were stated to pose a threat to the public interest, safety, and welfare because the lowered payments (in contradiction the positive effects of the assessment reduction in PA 88-88) would potentially lead to decreased services and staffing in DD facilities. DPA responded by repealing these rulemakings.

1993
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	1
Department of Agriculture	3
Department of Central Management Services	8
Department of Children and Family Services	2
Department of Commerce and Community Affairs	3
Comptroller	1
Department of Conservation	4
Department of Corrections	4
State Board of Elections	1
Department of Employment Security	2
Department of Financial Institutions	1
State Fire Marshal	2
Health Care Cost Containment Council	3
Health Facilities Planning Board	1
Housing Development Authority	1
Department of Insurance	4
Department of Labor	1
Department of Mines and Minerals	1
Department of Nuclear Safety	2
Pollution Control Board	3
Department of Professional Regulation	2
Department of Public Aid	17
Department of Public Health	21
Illinois Racing Board	3
Department of Rehabilitation Services	23
Department of Revenue	5
Secretary of State	5
Student Assistance Commission	3
U of I Board of Trustees	2
TOTAL	129

1993
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	1
Department of Agriculture	3
Department of Central Management Services	7
Department of Children and Family Services	2
Department of Commerce and Community Affairs	1
Comptroller	1
Department of Conservation	4
Department of Corrections	4
State Board of Elections	1
Department of Employment Security	2
State Fire Marshal	2
Department of Financial Institutions	1
Health Care Cost Containment Council	5
Health Facilities Planning Board	1
Housing Development Authority	1
Department of Insurance	3
Department of Labor	1
Department of Mines and Minerals	1
Department of Nuclear Safety	2
Pollution Control Board	3
Department of Professional Regulation	2
Department of Public Aid	16
Department of Public Health	21
Illinois Racing Board	3
Department of Rehabilitation Services	24
Department of Revenue	4
Secretary of State	6
Student Assistance Commission	4
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TOTAL	126

1993
EMERGENCY RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Children and Family Services	1	0	0
Health Facilities Planning Board	0	1	0
Department of Public Aid	0	0	2
Illinois Racing Board	0	2	0
U of I Trustees (Div. of Specialized. Care for Children)	0	1	0
TOTALS	1	4	2

1993
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Type of Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	1	25%
Economic Impact	1	25%
No Legitimate Emergency Existed	1	25%
Error in Language of Rule	1	25%

Type of Recommendation	Number of Recommendations	Percentage of Total
No Legitimate Emergency Existed	1	100%

Type of Suspension	Number of Suspensions	Percentage of Total
Statutory Authority/Legislative Intent	2	100%

1993

PEREMPTORY & EXEMPT

RULEMAKING

During 1993, only one peremptory rule received an Objection that stemmed from the improper use of peremptory rule procedures by the Office of the Treasurer. The rulemaking was to outline all the confidentiality measures that State agencies were to follow when gaining access to Public Aid recipient data. JCAR maintained that this rulemaking did not qualify as a peremptory rule because the federal regulations necessitating the rule do not preclude the use of the normal rulemaking process, the Treasurer retained discretion regarding the content of the rule, and the subject matter that the federal regulations directed the agency to cover in the rule (e.g., exceptions, procedures to confidentiality policy) was incomplete. The Treasurer stated that federal requirements necessitated peremptory rulemaking, but could furnish no reason for the expedited rulemaking process. However, the Treasurer responded to the Objection by proposing a rulemaking that repealed the peremptory rule and added key information missing from the earlier peremptory rule.

1993
PEREMPTORY & EXEMPT RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department of Agriculture	4
Department of Central Management Services	1
Department of Corrections	2
Pollution Control Board	20
Department of Public Aid	1
Treasurer	1
TOTAL	29

1993
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department of Agriculture	4
Department of Central Management Services	1
Department of Corrections	1
Pollution Control Board	18
Department of Public Aid	1
Treasurer	1
TOTAL	26

1993
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Office of the State Treasurer	0	1	0
TOTALS	0	1	0

1993
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Inappropriate Use of Peremptory Rulemaking	1	100%

**AGENCY RESPONSE
TO 1993
JCAR ACTION**

Agency	Appropriate Response	Inappropriate Response
OBJECTIONS		
Illinois Commerce Commission	1	0
Health Facilities Planning Board	1	0
Department of Insurance	1	0
Pollution Control Board	1	0
Department of Public Aid	0	1
Department of Public Health	2	1
Racing Board	3	0
Treasurer	1	0
U of I Board of Trustees	0	2
Totals	10	4
Percentage	71%	29%

RECOMMENDATIONS

Carnival-Amusement Safety Board	1	0
Department of Children & Family Services	1	0
Department of Mental Health & Developmental Disabilities	2	0
Department of Public Aid	2	1
Department of Public Health	2	1
Department of Rehabilitation Services	1	0
Department of Transportation	1	0
Totals	10	2
Percentage	83%	17%

AGENCY RESPONSE TO 1993 JCAR ACTION (Cont.)

Agency	Appropriate Response	Inappropriate Response
<i>PROHIBITIONS</i>		
Illinois Commerce Commission	1	0
Department of Conservation	1	0
Department of Financial Institutions	1	0
State Fire Marshal	1	0
Totals	4	0
Percentage	100%	0%

<i>SUSPENSION</i>		
Department of Public Aid	1	0
Totals	1	0
Percentage	100%	0%

1994

GENERAL RULEMAKING

In 1994, the Joint Committee reviewed 557 rulemakings, 462 of which were general rulemakings, 56 were emergency rulemakings, 10 were peremptory rulemakings and 29 were exempt rulemakings. Of these 557 rulemakings, JCAR voted 12 Recommendations, 13 Objections and 2 Prohibitions against general rulemakings and 2 Recommendations, 5 Objections and 1 Suspension against emergency rulemakings.

DPH proposed a rulemaking that established a program of care for generally healthy postsurgical patients undergoing surgery who required overnight care, pain control, or observation in a setting other than in-patient. Eligible participants must have been licensed as a hospital or ambulatory surgical treatment center (ASTC) before 2/20/91. At its June meeting, the Joint Committee objected to the rulemaking based on 4 areas. The Objections were: lack of statutory authority to limit admissions to patients who were 3 years of age or younger; exclusion of all patients but those who fell into 2 certain anesthesia classes from admittance was contrary to legislative intent; exclusion of patients requiring blood transfusions was contrary to legislative intent; and requirements that all postsurgical recovery care centers be built to Hospital Licensing Standards impeded implementation of a statute that intended some post-surgical centers to be housed in ASTCs. DPH refused to modify the rulemaking in response to the first Objection noting that children under 3 years of age are considered high risk and would not have been useful to the model. DPH modified its rulemaking in response the other 3 Objections. No one would be excluded on the basis of anesthesia classes or blood transfusions and hospitals or ambulatory surgical treatment centers were held to standards that were specific to the respective facility.

The Department of Public Health proposed a new policy (repealing current policy) regarding procedures to be followed by DPH and its Technical Advisory Committee (TAC) in selecting drug products for inclusion in the Illinois Drug Formulary (Formulary). A drug considered for inclusion in the Formulary would be selected if it was determined to be interchangeable with a brand name drug. The new policy allowed DPH and its TAC to consider drug products that the USFDA (FDA) determined are not equivalent or were exempt from FDA consideration. Previously, DPH only considered those drug products that the FDA had first deemed to be safe, effective and equivalent. The Joint Committee objected and prohibited the filing of this rulemaking at its September meeting because DPH had no specific statutory authority to propose provisions allowing DPH to consider inclusion of drug products in the Formulary that FDA had determined are not equivalent or that have been exempt from FDA consideration. Although DPH did not agree with JCAR's assertion that DPH lacks the statutory authority, the Department withdrew the rulemakings.

The Housing Development Authority proposed a rulemaking governing a single family mortgage purchase program, as authorized by statute and the Homeowner Mortgage Revenue Bonds General Resolution. This program financed, at interest rates below those available, residential mortgage loans for low and moderate income persons and families. Lenders were qualified for participation and HDA would have allocated available funding among the qualified lenders. The Joint Committee

objected to this rulemaking at its October meeting because the rulemaking allowed the Authority to waive or vary rule requirements by resolution rather than rulemaking. HDA agreed to modify its rules in response to JCAR's Objection. HDA retained its ability to waive or vary particular provisions, but deleted the broader waiver authority and stipulated that it will propose amendments to its rules whenever a resolution reflecting State or federal statutory requirements is adopted by the Authority.

1994
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	5
Department of Agriculture	13
Department of Alcoholism and Substance Abuse	1
Commissioner of Banks and Trust Companies	1
Carnival-Amusement Ride Safety Board	1
Department of Central Management Services	6
Department of Children and Family Services	16
Civil Service Commission	1
Department of Commerce and Community Affairs	7
Illinois Commerce Commission	16
Illinois Community College Board	4
Comptroller	3
Comptroller's Merit Commission	1
Department of Conservation	23
State Board of Education	10
State Board of Elections	1
Department of Employment Security	8
Environmental Protection Agency	3
Department of Financial Institutions	4
State Fire Marshal	3
Health Care Cost Containment Council	2
Health Facilities Authority	1
Health Facilities Planning Board	4
Board of Higher Education	1
Housing Development Authority	3
Department of Human Rights	3
Department of Insurance	6
Joint Committee on Administrative Rules	2
Department of Labor	1
Lieutenant Governor	1
Lottery	2

Department of Mental Health and Developmental Disabilities	6
Department of Mines and Minerals	2
Nature Preserves Commission	1
Northeastern Illinois Planning Commission	1
Department of Nuclear Safety	8
Pollution Control Board	37
Department of Professional Regulation	17
Department of Public Aid	43
Department of Public Health	28
Illinois Racing Board	27
Department of Rehabilitation Services	20
Teacher's Retirement System	1
Department of Revenue	20
Commissioner of Savings and Residential Finance	1
Secretary of State	13
State Police Merit Board	1
Student Assistance Commission	13
Department of Transportation	18
U of I Board of Trustees	1
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TOTAL	411
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1994
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	3
Department of Agriculture	13
Department of Alcoholism and Substance Abuse	1
Commissioner of Banks and Trust Companies	2
Carnival-Amusement Ride Safety Board	1
Department of Central Management Services	10
Department of Children and Family Services	8
Department of Commerce and Community Affairs	12
Illinois Commerce Commission	17
Illinois Community College Board	4
Community Development Finance Corporation	1
Department of Conservation	32
Comptroller	3
Comptroller's Merit Commission	1
Department of Corrections	4
Criminal Justice Information Authority	1
State Board of Education	10
Emergency Management Agency	4
Employment Security	10
Environmental Protection Agency	3
Department of Financial Institutions	3
State Fire Marshal	2
Health Care Cost Containment Council	2
Health Facilities Authority	1
Health Facilities Planning Board	4
Board of Higher Education	1
Housing Development Authority	4
Department of Human Rights	1
Department of Insurance	10
Joint Committee on Administrative Rules	1
Department of Labor	1

Lieutenant Governor	1
Liquor Control Commission	1
Lottery	2
Department of Mental Health and Developmental Disabilities	6
Department of Mines and Minerals	2
Motor Vehicle Theft Prevention Council	2
Northeastern Illinois Planning Commission	1
Department of Nuclear Safety	16
Pollution Control Board	38
Department of Professional Regulation	19
Department of Public Aid	55
Department of Public Health	37
Illinois Racing Board	38
Department of Rehabilitation Services	9
Teacher's Retirement System	2
Department of Revenue	10
Commissioner of Savings and Residential Finance	1
Secretary of State	17
Student Assistance Commission	12
Department of Transportation	21
U of I Board of Trustees	1
Universities Civil Service Commission	1
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TOTAL	462
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1994
GENERAL RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Prohibit
Department of Central Management Services	2	0	0
Department of Children & Family Services	4	0	0
Commerce & Community Affairs	1	0	0
Commerce Commission	1	0	0
Department of Employment Security	1	0	0
State Fire Marshal	1	0	0
Health Facilities Planning Board	0	1	0
Housing Development Authority	0	1	0
Department of Labor	0	1	0
Pollution Control Board	0	1	0
Department of Professional Regulations	1	0	0
Department of Public Aid	0	1	0
Department of Public Health	0	7	2
Department of Revenue	0	1	0
Secretary of State	1	0	0
TOTALS	12	13	2

1994
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	7	54%
Economic Impact on Local Government	1	8%
Economic Impact on Affected Public	5	38%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Further Rulemaking	7	59%
Statutory Clarification	3	25%
Further Clarification of the Rulemaking	1	8%
Agency Adhere to Statutory Timelines	1	8%

Basis for Filing Prohibition	Number of Prohibitions	Percentage of Total
Statutory Authority/Legislative Intent	2	100%

1994

EMERGENCY RULEMAKING

The Department of Employment Security adopted an emergency rulemaking in February that permitted employers to apply for a waiver from the electronic filing requirements adopted by the Department on 12/27/93. This grace period was applicable for the first 2 quarters of 1994. The deadline for seeking an extension was expressly stated in the rulemaking as 3/15/94. The Joint Committee originally considered this emergency rulemaking without comment at its March meeting, but conversations with DES staff after the meeting revealed that the 3/15/94 deadline was inadequate for employers on whose behalf this rulemaking was filed. At its April meeting, JCAR objected to this emergency rulemaking. DES failed to consider the adverse economic impact that its 3/15/94 application deadline for the waiver of electronic filing requirements would have upon affected businesses. DES readily conceded its error and responded by removing the 3/15/94 deadline.

DPA adopted emergency rules that provided for Medicaid coverage for termination of pregnancies resulting from rape or incest pursuant to federal law. At its July meeting, JCAR objected to this emergency rulemaking, noting that Illinois statute specifically provided that Medicaid funds would be used for abortions only if the mother's life is endangered. Even though the 150-day life of the emergency rule was set to expire on 11/28/94, JCAR suspended the emergency rule at its 11/15/94 meeting (effective 11/17/94). The Planned Parenthood Association immediately filed a civil action against DPA requesting the restoration of the rule. On 12/6/94, the U.S. District Court required DPA to follow the Hyde Amendment (this amendment was reworded to include Medicaid funding of abortions in cases of rape and incest) and pay for abortions for rape and incest victims who are Medicaid recipients. DPA stated that it had no choice but to abide by the federal requirement or risk loss of Medicaid funds. Thus, DPA funded these abortions pursuant to the federal court order, with no State statute or rule providing a basis for Medicaid payment for these abortions in cases of rape or incest. On 4/3/95, DPA repealed the emergency rulemaking and withdrew the proposed rulemaking.

The Teachers' Retirement System adopted an emergency rulemaking on 5/17/94 allowing TRS to require commencement of school district retirement payments on a quarterly basis effective 10/15/94 rather than 1/15/95. The Joint Committee objected to TRS's emergency rules at its July meeting because there was no emergency situation that warranted the unexpected financial burden created for Illinois school districts. TRS modified the rulemaking to indicate that the System will tailor payment plans for school districts to assist in meeting the unexpected financial burden.

1994
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	1
Department of Agriculture	1
Commissioner of Banks & Trust Companies	1
Department of Central Management Services	2
Department of Children and Family Services	3
Illinois Commerce Commission	2
Comptroller	1
Department of Conservation	2
State Board of Education	1
Department of Employment Security	1
Health Care Cost Containment Council	1
Housing Development Authority	2
Joint Committee on Administrative Rules	1
Department of Labor	1
Department of Mines & Minerals	2
Department of Nuclear Safety	1
Pollution Control Board	1
Department of Professional Regulation	1
Department of Public Aid	5
Department of Public Health	6
Illinois Racing Board	1
Department of Rehabilitation Services	1
Commissioner of Savings and Residential Finance	1
Secretary of State	1
Student Assistance Commission	1
Teacher's Retirement System	1
Department of Transportation	1
Department of Veterans Affairs	1
TOTAL	44

1994
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	1
Department of Agriculture	1
Commissioner of Banks and Trust Companies	1
Department of Central Management Services	3
Department of Children and Family Services	4
Department of Commerce and Community Affairs	2
Illinois Commerce Commission	2
Comptroller	1
Department of Conservation	4
State Board of Education	1
Department of Employment Security	1
Health Care Cost Containment Council	1
Housing Development Authority	2
Department of Insurance	2
Joint Committee on Administrative Rules	1
Department of Labor	1
Department of Mines and Minerals	2
Pollution Control Board	1
Department of Professional Regulation	1
Department of Public Aid	7
Department of Public Health	7
Illinois Racing Board	1
Department of Rehabilitation Services	1
Department of Revenue	1
Commissioner of Savings and Residential Finance	1
Secretary of State	2
Student Assistance Commission	1
Teacher's Retirement System	1
Department of Transportation	1
Department of Veterans Affairs	1
TOTAL	56

1994
EMERGENCY RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Central Management Services	1	0	0
Department of Children and Family Services	1	0	0
Illinois Commerce Commission	0	1	0
Department of Employment Security	0	1	0
Department of Public Aid	0	1	1
Racing Board	0	1	0
Teachers Retirement System	0	1	0
TOTALS	2	5	1

1994
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Type of Suspension	Number of Suspensions	Percentage of Total
Statutory Authority	1	100%

Type of Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	2	40%
Economic Impact	2	40%
Further Clarification of the Rulemaking	1	20%

Type of Recommendation	Number of Recommendations	Percentage of Total
Statutory Authority	2	100%

1994

PEREMPTORY & EXEMPT

RULEMAKING

Agencies rarely avail themselves of peremptory rulemaking procedures due to the particular constraints placed on this procedure by the Administrative Procedure Act. Section 5-50 of the IAPA specifies that agencies may only use this short form rulemaking procedure, in which the rule is adopted without allowing a period of public and JCAR comment, if the rulemaking is required by federal law, federal regulations, court orders or collective bargaining agreements and if the agency cannot exercise any discretion with respect to the rule. Agencies must file the peremptory rule with the Secretary of State within 30 days after the change in rules is required.

Exempt rulemaking is a specialized form of rulemaking, similar to the peremptory rulemaking process, reserved for use by the Pollution Control Board under the Environmental Protection Act. PCB can use this short form procedure only to adopt Illinois regulations that are "identical in substance" to mandated federal regulations.

In 1994, the Department of Agriculture utilized peremptory rulemakings 7 times to adopt regulations identical to federal regulations and CMS 3 times to implement collective bargaining agreements. PCB adopted 29 rulemakings identical in substance to federal regulations. JCAR additionally considered 1 peremptory rulemaking that the Attorney General had adopted in 1993.

JCAR did not take any action against agencies that used peremptory or exempt rulemaking procedures in 1994.

1994
PEREMPTORY & EXEMPT RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department of Agriculture	7
Department of Central Management Services	3
Pollution Control Board	29
TOTAL	39

1994
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department of Agriculture	7
Attorney General	1
Department of Central Management Services	3
Pollution Control Board	29
TOTAL	40

1994
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
None			

***AGENCY RESPONSE
TO 1994
JCAR ACTION***

Agency	Appropriate Response	Inappropriate Response
<i>FILING PROHIBITIONS</i>		
Department of Public Health	2	0
Totals	2	0
Percentage	100%	0%

OBJECTIONS

Commerce Commission	0	1
Department of Employment Security	1	0
Health Facilities Planning Board	0	1
Housing Development Authority	1	0
Department of Labor	0	1
Pollution Control Board	0	1
Department of Public Aid	0	3
Department of Public Health	3	1
Racing Board	1	0
Department of Revenue	0	1
Teacher's Retirement System	1	0
Totals	7	9
Percentage	44%	56%

RECOMMENDATIONS

Department of Central Management Services	3	0
Department of Children & Family Services	3	0
Department of Commerce & Community Affairs	1	0
Commerce Commission	1	0
Department of Employment Security	1	0
State Fire Marshal	1	0
Department of Professional Regulation	1	0
Secretary of State	1	0
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Totals	12	0
Percentage	100%	0%
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1995

GENERAL RULEMAKING

In 1995, the Joint Committee reviewed 599 rulemakings, 507 of which were general rulemakings, 80 were emergency rulemakings and 12 were peremptory rulemakings. Of these 599, JCAR voted 10 Recommendations, 14 Objections and 2 Prohibitions against general rulemakings; 6 Recommendations and 3 Objections against emergency rulemakings and 1 Recommendation against a peremptory rulemaking.

SBE proposed a rulemaking that would allow SBE to regulate nonpublic special education facilities in the same manner as public schools. At its February meeting, JCAR voted to object and prohibit this rulemaking because SBE had exceeded its statutory authority under the School Code. The Committee noted that the rulemaking could result in a shortage of certified special education teachers/administrators. In response to the Objection/Prohibition, SBE modified the rulemaking to allow a 4 year transition period for nonpublic special education institutions to comply with licensure/certification requirements. SBE also agreed to modify the rulemaking in 10 other areas, including contractual arrangements, substitute teachers and due process.

DASA proposed a rulemaking that would remove the right of an applicant for renewal of provider certification to appeal DASA's decision denying renewal certification and to request a hearing regarding that denial. Additionally, the rulemaking did not allow for certification to remain in effect pending a hearing decision. The Alcoholism and other Drug Abuse and Dependency Act makes specific provisions for these rights. This rulemaking contradicted that statute. JCAR voted to object and prohibit filing of the rulemaking based upon this contradiction. DASA modified the rulemaking to remove the contradictory language and restore due process provisions. JCAR removed the Filing Prohibition at the June meeting and recommended that DASA initiate a comprehensive review of its various policies and regulations for the necessity of additional rulemaking.

DPH proposed 4 rulemakings affecting its long term care facilities rules that implemented amendments to the Nursing Home Care Act concerning use of restraints and drug treatment. Under these rulemakings, DPH would be relying on a broad definition of physical restraint. The definition treats physical restraint used for the benefit and well being of the individual, such as a safety or assistive device, the same as restraint that is used for the convenience of facility staff or for punishment. Under these rulemakings, DPH also raised federal interpretive guidelines to the level of administrative law. Although DPH was required by PA 88-413 to designate by rule certain devices as restraints, the Department could not adequately justify why all restraint was regarded as if it were discipline or was required for the staff to perform their duties. The Committee voted Objections to these 4 rulemakings. In response, the Department removed the language and agreed to discuss these issues with the affected parties before reproposing rulemakings. After these meetings were held, DPH published the 4 modified rulemakings in the October 1995 issue of the *Illinois Register*.

1995
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	3
Department of Agriculture	22
Department of Alcoholism and Substance Abuse	3
Attorney General	1
Auditor General	2
Commissioner of Banks and Trust Companies	2
Capital Development Board	2
Department of Central Management Services	16
Department of Children and Family Services	22
Department of Commerce and Community Affairs	4
Illinois Commerce Commission	10
Comptroller's Merit Commission	1
Department of Conservation	29
Department of Corrections	4
State Board of Education	10
Educational Facilities Authority	1
State Board of Elections	1
Department of Employment Security	3
Environmental Protection Agency	6
Department of Financial Institutions	4
State Fire Marshal	6
Health Care Cost Containment Council	5
Health Facilities Planning Board	1
Housing Development Authority	1
Department of Human Rights	1
Industrial Commission	4
Department of Insurance	19
Department of Labor	4
Law Enforcement Training & Standards Board	1
Liquor Control Commission	1
Lottery	1

Department of Mental Health and Developmental Disabilities	4
Department of Mines and Minerals (later, DNR)	25
Department of Nuclear Safety	5
Pollution Control Board	32
Department of Professional Regulation	13
Department of Public Aid	75
Department of Public Health	29
Illinois Racing Board	37
Department of Rehabilitation Services	20
Department of Revenue	21
Commissioner of Savings and Residential Finance	5
Secretary of State	14
Department of State Police	1
State Police Merit Board	1
State Universities Civil Service System	1
Student Assistance Commission	8
Teachers Retirement System	1
Department of Transportation	22
U of I Board of Examiners	1
U of I Board of Trustees	1
Department of Veterans Affairs	1

TOTAL

507

1995
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	5
Department of Agriculture	20
Department of Alcoholism and Substance Abuse	2
Attorney General	1
Auditor General	2
Commissioner of Banks and Trust Companies	1
Capital Development Board	2
Department of Central Management Services	15
Department of Children and Family Services	28
Civil Service Commission	1
Department of Commerce and Community Affairs	3
Illinois Commerce Commission	14
Community College Board	1
Comptroller's Merit Commission	1
Department of Conservation (later, DNR)	26
Department of Corrections	2
State Board of Education	13
State Board of Elections	1
Department of Employment Security	3
Environmental Protection Agency	6
Farm Development Authority	1
Department of Financial Institutions	1
State Fire Marshal	3
Health Care Cost Containment Council	5
Health Facilities Planning Board	3
Housing Development Authority	1
Department of Insurance	15
Department of Labor	4
Lieutenant Governor	1
Liquor Control Commission	1
Lottery	1

Department of Mental Health and Developmental Disabilities	2
Department of Mines and Minerals (later, DNR)	25
Department of Natural Resources	5
Department of Nuclear Safety	7
Pollution Control Board	14
Department of Professional Regulation	17
Department of Public Aid	62
Department of Public Health	25
Illinois Racing Board	38
Department of Rehabilitation Services	40
Department of Revenue	13
Commissioner of Savings & Residential Finance	5
Secretary of State	11
Department of State Police	1
State Police Merit Board	3
Student Assistance Commission	12
Department of Transportation	19
U of I Board of Trustees	1
Department of Veterans Affairs	1

TOTAL

484

1995
GENERAL RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Prohibit
Department of Agriculture	1	0	0
Department of Alcoholism & Substance Abuse	1	3	1
Department of Children & Family Services	2	0	0
Commerce Commission	1	0	0
Department of Commerce & Community Affairs	0	1	0
State Board of Education	0	1	1
Environmental Protection Agency	1	0	0
Department of Labor	0	1	0
Department of Professional Regulations	0	2	0
Department of Public Aid	2	1	0
Department of Public Health	2	5	0
TOTALS	10	14	2

1995
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	10	72%
Economic Impact on Affected Public	2	14%
Undue Hardship for the Affected Public	1	7%
Legislative Intent and Economic Impact	1	7%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Further Rulemaking	5	50%
Statutory Clarification	5	50%

Basis for Filing Prohibition	Number of Prohibitions	Percentage of Total
Statutory Authority/Legislative Intent	2	100%

1995

EMERGENCY RULEMAKING

Eighty rulemakings were adopted using emergency rulemaking procedures, of which 2 are worthy of note.

DOR filed an emergency rulemaking implementing a statutory revision that created the senior citizens' property tax freeze. The rulemaking required local tax assessors, not DOR, to verify that applicants meet income limitations in order to qualify for the freeze. JCAR recommended that DOR amend the proposed replacement rulemaking to require that DOR, not assessors, verify the income information using Illinois tax returns filed by applicants. In voting this recommendation, JCAR relied on legislative intent behind the authorizing Act. DOR was to be the sole responsible party for verifying homestead exemptions. DOR did not provide a written response to the recommendation within 90 days, but appeared before JCAR at a later meeting and explained that it was attempting to address the Committee's concerns. The rulemaking expired on 3/3/96. To date, DOR has not initiated efforts to meet the statutory requirement that they establish a method for verifying the accuracy of affidavits.

DPA filed an emergency rulemaking that created a pilot program to improve children's attendance in elementary schools. The rulemaking allowed DPA to require AFDC families whose children were beginning to show attendance problems, as identified by the schools, to participate in this pilot program. Uncooperative AFDC families would be subject to the Protective Payee status. Use of the Protective Payees for this pilot program was contrary to the Public Aid Code. JCAR objected to the rulemaking because the program was contrary to statute and no emergency constituting a threat to the public interest, welfare and safety was apparent. DPA refused to modify the rulemaking in response to the Objections, but a statutory change was sought and granted under PA 89-6 (effective 3/6/95). Although DPA adopted this emergency rulemaking before the legislation became statute, the changed provisions in the law allow DPA to use the Protective Payee status for this program. PA 89-6 also established that the situation constituted an emergency and authorized DPA to use emergency rulemaking procedures to implement the program.

1995
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	2
Department of Agriculture	1
Commissioner of Banks and Trust Companies	1
Department of Central Management Services	1
Department of Children and Family Services	6
Department of Conservation	4
State Board of Education	1
Board of Elections	1
Department of Employment Security	1
Environmental Protection Agency	1
Health Care Cost Containment Council	1
Health Facilities Planning Board	2
Housing Development Authority	1
Department of Insurance	1
Department of Mental Health and Developmental Disabilities	2
Department of Nuclear Safety	2
Pollution Control Board	1
Department of Professional Regulation	1
Department of Public Aid	29
Department of Public Health	5
Racing Board	4
Department of Rehabilitation Services	1
Department of Revenue	3
Commissioner of Savings and Residential Finance	4
Secretary of State	1
Student Assistance Commission	1
U of I Board of Trustees	1
TOTAL	79

1995
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	2
Department of Agriculture	1
Commissioner of Banks and Trust Companies	1
Department of Central Management Services	1
Department of Children and Family Services	6
Department of Conservaiton	4
State Board of Education	1
Board of Elections	1
Department of Employment Security	2
Environmental Protection Agency	1
Health Care Cost Containment Council	1
Health Facilities Planning Board	3
Housing Development Authority	1
Department of Insurance	1
Department of Mental Health and Developmental Disabilities	2
Department of Nuclear Safety	3
Pollution Control Board	1
Department of Professional Regulation	1
Department of Public Aid	29
Department of Public Health	4
Racing Board	4
Department of Rehabilitation Services	1
Department of Revenue	3
Commissioner of Savings and Residential Finance	4
Secretary of State	1
Student Assistance Commission	1
U of I Board of Trustees	1
TOTAL	81

1995
EMERGENCY RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Children and Family Services	0	1	0
Department of Conservation	1	0	0
State Board of Education	1	0	0
Health Facilities Planning Board	1	0	0
Department of Public Aid	1	2	0
Racing Board	1	0	0
Department of Revenue	1	0	0
TOTAL	6	3	0

1995
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Type of Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	3	100%

Type of Recommendation	Number of Recommendations	Percentage of Total
Further Rulemaking	1	17%
Avoid Agency Created Emergency	2	33%
Clarification of Permanent Rulemaking	3	50%

1995
PEREMPTORY & EXEMPT

RULEMAKING

Twelve Peremptory Rulemakings were presented to JCAR in 1995, but the Committee took action on only one. The Department of Central Management Services did not follow the procedures for adopting a peremptory rulemaking. The change to the rulemaking was prompted by a statutory change. Since peremptory rulemaking procedures can only be used to implement a court order or collective bargaining agreement, the Committee recommended that CMS use general rulemaking for further changes of this nature. CMS responded that it would do so.

1995
PEREMPTORY & EXEMPT RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department of Agriculture	5
Department of Central Management Services	6
Pollution Control Board	20
Department of Public Aid	1
TOTAL	32

1995
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department of Agriculture	5
Department of Central Management Services	6
Pollution Control Board	35
Department of Public Aid	1
TOTAL	47

1995
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Central Management Services	1	0	0
TOTAL	1	0	0

1995
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Type of Recommendation	Number of Recommendations	Percentage of Total
Avoid Improper Use of Peremptory Rulemaking	1	100%

**AGENCY RESPONSE
TO 1995
JCAR ACTION**

Agency	Appropriate Response	Inappropriate Response
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FILING PROHIBITIONS

Department of Alcoholism & Substance Abuse	1	0
State Board of Education	1	0
Totals	2	0
Percentages	100%	0%

OBJECTIONS

Department of Alcoholism & Substance Abuse	3	1
Illinois Commerce Commission	0	1
Department of Children and Family Services	1	0
Department of Labor	0	1
Department of Professional Regulation	0	1
Department of Public Aid	0	2
Department of Public Health	4	1
Totals	8	7
Percentage	53%	47%

AGENCY RESPONSE TO 1995 JCAR ACTION (Cont.)

Agency	Appropriate Response	Inappropriate Response
<i>RECOMMENDATIONS</i>		
Department of Alcoholism & Substance Abuse	1	0
Department of Central Management Services	1	0
Department of Children & Family Services	2	0
State Board of Education	1	0
Environmental Protection Agency	1	0
Health Facilities Planning Board	1	0
Department of Natural Resources	1	0
Department of Public Aid	2	0
Racing Board	1	0
Department of Revenue	0	1
Totals	11	1
Percentage	92%	8%

1996

GENERAL RULEMAKING

In 1996, the Joint Committee reviewed 669 rulemakings; 554 were general rulemakings, 71 emergency rulemakings, and 44 were peremptories or PCB exempts. JCAR voted 19 Objections, 12 Recommendations and 4 Filing Prohibitions on general rulemakings; 8 Objections, 3 Recommendations and 2 Suspensions on Emergencies; and 1 Objection on a Peremptory rulemaking. The Committee issued 7 Notices of Failure to Remedy on agency responses to JCAR actions.

The Committee voted an Objection to a DOR rulemaking implementing the Property Tax Code because the rulemaking authorized county assessment officers to verify information provided on applications for the Senior Citizens Assessment Freeze Homestead Exemption, rather than prescribing procedures by which DOR will conduct the verification, as is intended by Section 15-172(c) of the Property Tax Code. The rulemaking expired on 3/3/96. The expiration leaves only one issue: the Property Tax Code requires DOR to "establish, by rule, a method for verifying the accuracy of affidavits...." DOR has not to date met this statutory obligation.

JCAR voted a Recommendation on a Law Enforcement Officers Training and Standards Board rulemaking establishing training requirements for part-time officers. JCAR recommended that, before adoption of this new rule, the Board meet with representatives of local government, local law enforcement agencies and law enforcement officers in an effort to reach a mutually acceptable agreement on the definition of "part-time police officers", and JCAR specifically questioned the Board's decision not to review independently the hours an officer works for each local governmental agency in determining whether the officer is a part-time officer. The rulemaking originally defined part-time to mean working no more than 25 hours on a regular basis or no more than 60 hours in 6 months. The Board met with commentators at its 6/16/96 meeting and voted to change the definitions of "part-time police officer" and "full-time police officer". The modification appeased only a portion of the commentators (IML and the Ill. Assoc. of Chiefs of Police). No agreement was reached among all commentators. Further, the modification did nothing to specifically address the effect of the hours limitation on an officer who works for multiple local governments. The rulemaking's failure to address this specific concern was partially mitigated by the expansion of hours to 1,560 per year and deletion of any mention of a weekly calculation, thereby expanding the underlying weekly average to 30 hrs. Contrary to the Committee's intent, further changes were made without common agreement among all parties. Therefore, JCAR issued a Notice of Failure to Remedy.

JCAR Objected to and Prohibited the filing of 4 ICC rules creating procedures for arbitration between local telephone carriers and the former long distance only carriers who now desire to move into local service under the recent federal local telecommunications deregulation. JCAR found the rules to be unnecessarily burdensome for some of the parties subject to the rules, creating a threat to the public interest and welfare under Sec. 5-115 of the Illinois Administrative Procedure Act. The Committee also Objected to and Suspended identical emergency rulemakings on 2 of the 4 Parts. In April 1997, JCAR withdrew its Filing Prohibitions/Suspensions, as the period for the arbitration had expired under federal law and thus this issue was no longer relevant.

In November, JCAR Objected to a proposed rulemaking that increased the maximum amount DPA will pay for burial and funeral expenses because the increases contravened statute that specifically limits the amounts of these payments. DPA responded by refusing to modify the rulemaking, but agreed that legislation was needed to remove the statutory impediment to the agency action. DPA defended its position by contending that it had been appropriated funds to pay the higher amounts and that the appropriation action should be taken to outweigh the statutory limitation. In the Spring 1997 session, JCAR proposed successful legislation that increased the statutory limits on funeral and burial expenses.

In another instance of JCAR Objection because the agency action was contrary to statute, DPA again chose to adopt the rulemaking over the Objection. The statute specifically authorized a DPA child support demonstration program for a 1 year period; DPA rules created a 3 year program. Arguing that the federal government wanted the project to operate for 3 years, DPA persisted in ignoring the statute. Again, in the 1997 session, JCAR was successful in proposing legislation statutorily authorizing the 3 year demonstration.

The Secretary of State proposed a rulemaking sharply restricting public access to driver's license/vehicle/title information for use by commercial enterprises for solicitation purposes. JCAR Objected because the rulemaking failed to adequately consider the economic effects of this rulemaking upon those regulated, in particular, small businesses. The IAPA specifically requires both State agencies and JCAR to make every effort to mitigate the negative effects of administrative rules on small businesses. In December 1996, the Secretary respectfully declined to modify or withdraw this rulemaking. The Secretary reported that his Office had met with the business community extensively in an attempt to reach some sort of accommodation, but that no solution could be reached. The Secretary concluded that consumer personal privacy considerations should prevail over commercial interests in this instance, and that in any event, marketing firms will still have access to other sorts of information with which to prepare their mailing lists. The rulemaking was adopted, effective 1/1/97. A marketing company filed suit, seeking an injunction against implementation of the rule, and was successful in Sangamon County Circuit Court.

DOL made another effort to establish the standards necessary to administer and enforce the Personnel Record Review Act; earlier adopted rules were held unconstitutional in 1987 as being vague in that an employer could not determine which types of personnel documents were or were not subject to disclosure under the Act. JCAR Objected because the proposed definition of "employee" was unduly economically burdensome to some employers. The chosen definition differed from definitions used within other State laws and created a test for independent contractor status that differs from tests commonly used in other State laws or by other State agencies. In response to the Objection (and extensive additional public comment), DOL withdrew its proposed rulemaking. Because of the continuing input from regulated parties, the Department believes it is appropriate to begin anew with a comprehensively altered rulemaking, with full opportunity for all affected parties to once again provide further comment.

1996
GENERAL RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	6
Department of Agriculture	15
Department of Alcoholism and Substance Abuse	5
Commissioner of Banks and Real Estate	11
Capital Development Board	11
Department of Central Management Services	15
Department of Children and Family Services	23
Department of Commerce and Community Affairs	5
Illinois Commerce Commission	10
Comptroller	1
Community College Board	5
Department of Corrections	4
Criminal Justice Information Authority	1
State Board of Education	7
Educational Facilities Authority	1
State Board of Elections	2
Department of Employment Security	2
Environmental Protection Agency	5
Department of Financial Institutions	1
State Fire Marshal	5
Gaming Board	2
Health Facilities Authority	4
Health Facilities Planning Board	2
Historic Preservation Agency	1
Human Rights Commission	1
Department of Human Rights	1
Department of Insurance	13
Department of Labor	2
Labor Relations Board	5
Legislative Travel Control Board	1
Lottery	1

Department of Mental Health and Developmental Disabilities	11
Department of Natural Resources	31
Department of Nuclear Safety	11
Pollution Control Board	34
Property Tax Appeal Board	1
Department of Professional Regulation	17
Department of Public Aid	53
Department of Public Health	30
Illinois Racing Board	16
Department of Rehabilitation Services	22
Department of Revenue	32
Secretary of State	21
State Employees Retirement System	1
Department of State Police	4
State Police Merit Board	2
State Universities Retirement System	1
Student Assistance Commission	19
Teacher's Retirement System	1
Toll Highway Authority	1
Department of Transportation	12

TOTAL

488

1996
GENERAL RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	4
Department of Agriculture	21
Department of Alcoholism and Substance Abuse	7
Commissioner of Banks and Real Estate	10
Capital Development Board	11
Department of Central Management Services	19
Department of Children and Family Services	20
Department of Commerce and Community Affairs	2
Illinois Commerce Commission	15
Comptroller	1
Department of Corrections	7
Criminal Justice Information Authority	2
State Board of Education	12
Educational Facilities Authority	1
State Board of Elections	2
Department of Employment Security	3
Environmental Protection Agency	3
Department of Financial Institutions	6
State Fire Marshal	7
Gaming Board	4
Health Care Cost Containment Council	1
Health Facilities Planning Board	8
Historic Preservation Agency	1
Human Rights Commission	2
Department of Human Rights	4
Industrial Commission	4
Department of Insurance	16
Department of Labor	6
Legislative Travel Control Board	1
Law Enforcement Training & Standards Board	1
Lottery	1

Department of Mental Health and Developmental Disabilities	4
Department of Natural Resources	28
Department of Nuclear Safety	12
Pollution Control Board	17
Department of Professional Regulation	16
Department of Public Aid	77
Department of Public Health	40
Illinois Racing Board	13
Department of Rehabilitation Services	26
Department of Revenue	32
Secretary of State	30
State Employees Retirement System	1
State and Local Labor Relations Boards	5
Department of State Police	6
State Police Merit Board	3
State Universities Civil Service System	1
Student Assistance Commission	21
Teacher's Retirement System	1
Toll Highway Authority	1
Department of Transportation	18

TOTAL

554

1996
GENERAL RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Prohibit
Department of Agriculture	1	0	0
Central Management Services	1	0	0
Commerce Commission	0	4	4
Comptroller	1	0	0
Department of Commerce & Community Affairs	1	0	0
Department of Corrections	1	0	0
State Board of Education	0	1	0
Gaming Board	1	0	0
Historic Preservation Agency	0	1	0
Department of Human Rights	1	1	0
Department of Labor	0	4	0
Law Enforcement Training & Standards Board	1	1	0
Department of Natural Resources	0	2	0
Department of Public Aid	2	4	0
Department of Revenue	0	2	0
Secretary of State	1	1	0
Department of State Police	1	0	0
TOTALS	12	19	4

1996
GENERAL RULEMAKINGS:
BASIS FOR JCAR ACTION

Basis for Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	10	53%
Economic Impact on Affected Public	2	11%
Undue Hardship for the Affected Public	4	21%
Lack of Clarity	1	5%
Incompleteness of the Rulemaking	1	5%
Failure to Fully Comply with the IAPA	1	5%

Basis for Recommendation	Number of Recommendations	Percentage of Total
Further Rulemaking	2	17%
Statutory Clarification	3	25%
Undue Hardship for the Affected Public	2	17%
Failure to Fully Comply with the IAPA	4	33%
Economic Impact on Affected Public	1	8%

Basis for Filing Prohibition	Number of Prohibitions	Percentage of Total
Undue Hardship for the Affected Public	4	100%

1996

EMERGENCY RULEMAKING

DCFS adopted extensive emergency rules during 1996 in an effort to implement the criminal history background check laws as quickly as possible. The emergency rules, like the identical permanent rulemakings, were largely adequate, with JCAR having only narrow objection to specific elements. For example, the emergency rules specified that purchase of service providers may be required to authorize background checks if they have contact with children as part of their duties and added drug offenses to the statutory offenses that bar licensure as, or employment within, a child care facility. JCAR Recommended that DCFS seek specific statutory authority to require background checks on purchase of service providers and to include drug offenses as a bar to licensure or employment in a child care facility. When DCFS adopted the permanent rules, it removed the drug offense provisions. With respect to the issue of extending the rule's requirements to purchase of service providers, DCFS removed these provisions from the emergency rule.

JCAR additionally issued an Objection based on the Committee's belief that emergency rules should not have been used to implement other statutory requirements that had been in existence for over 2 years; the rules did not clearly reflect that they apply only to new license applicants and new hires; DCFS had omitted from the rules its policy that allows conditional employees to be left alone with children when they have been checked through CANTS and have submitted fingerprints for the criminal history check; and the rules specified that background checks *may* be required for purchase of service providers who have contact with children as part of their duties, but included no standards by which DCFS will determine for whom background checks are required. In response to the Objection, DCFS removed all the questioned elements from the emergency rules.

1996
EMERGENCY RULEMAKINGS
ADOPTED BY THE AGENCY

Agency	Number of Rulemakings
Department on Aging	1
Department of Agriculture	1
Department of Alcoholism and Substance Abuse	1
Department of Central Management Services	2
Department of Children and Family Services	9
Commerce Commission	2
Criminal Justice Information Authority	1
State Board of Education	2
Board of Elections	1
Department of Financial Institutions	1
Gaming Board	1
Human Rights Commission	1
Department of Human Rights	2
Department of Nuclear Safety	1
Pollution Control Board	1
Department of Professional Regulation	1
Department of Public Aid	13
Department of Public Health	13
Racing Board	1
Department of Rehabilitation Services	2
Department of Revenue	3
Secretary of State	7
Department of State Police	2
State Police Merit Board	1
Student Assistance Commission	2
TOTAL	72

1996
EMERGENCY RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department on Aging	1
Department of Agriculture	1
Department of Alcoholism and Substance Abuse	1
Department of Children and Family Services	8
Commerce Commission	2
Department of Corrections	1
Criminal Justice Information Authority	1
State Board of Education	2
Board of Elections	1
Gaming Board	1
Department of Financial Institutions	1
Human Rights Commission	1
Department of Human Rights	2
Department of Nuclear Safety	1
Pollution Control Board	1
Department of Professional Regulation	1
Department of Public Aid	15
Department of Public Health	13
Racing Board	1
Department of Rehabilitation Services	1
Department of Revenue	2
Secretary of State	7
Department of State Police	2
State Police Merit Board	1
Student Assistance Commission	2
<hr/>	
TOTAL	70

1996
EMERGENCY RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Children and Family Services	1	1	0
Commerce Commission	0	2	2
Department of Public Aid	2	3	0
Secretary of State	0	1	0
Department of Public Health	0	1	0
TOTAL	3	8	2

1996
EMERGENCY RULEMAKINGS:
BASIS FOR JCAR ACTION

Type of Objection	Number of Objections	Percentage of Total
Statutory Authority/Legislative Intent	2	25%
Clarity	1	12%
Failure to Fully Comply with the IAPA	1	12%
Incompleteness of the Rulemaking	1	12%
Lack of Propriety	1	12%
Economically Burdensome on the Affected Public	2	25%

Type of Recommendation	Number of Recommendations	Percentage of Total
Statutory Authority/Legislative Intent	2	66%
Incompleteness of the Rulemaking	1	33%

1996
PEREMPTORY & EXEMPT
RULEMAKING

1996
PEREMPTORY & EXEMPT RULEMAKINGS
PROPOSED BY THE AGENCY

Agency	Number of Rulemakings
Department of Agriculture	5
Department of Central Management Services	4
Pollution Control Board	17
Department of Public Aid	1
TOTAL	27

1996
PEREMPTORY & EXEMPT RULEMAKINGS
CONSIDERED BY JCAR

Agency	Number of Rulemakings
Department of Agriculture	5
Department of Central Management Services	4
Pollution Control Board	17
Department of Public Aid	1
TOTAL	27

1996
PEREMPTORY & EXEMPT RULEMAKINGS:
JCAR ACTION

Agency	Rec	Obj	Suspend
Department of Public Aid	0	1	0
TOTAL	0	1	0

1996
PEREMPTORY & EXEMPT RULEMAKINGS:
BASIS FOR JCAR ACTION

Type of Objection	Number of Objections	Percentage of Total
Failure to Comply with IAPA Deadlines	1	100%

***AGENCY RESPONSE
TO 1996
JCAR ACTION***

Agency	Appropriate Response	Inappropriate Response
<i>OBJECTIONS</i>		
Department of Agriculture	1	0
Department of Children and Family Services	1	0
Department of Commerce & Community Affairs	0	1
Department of Human Rights	2	0
Department of Labor	1	1
Department of Natural Resources	1	0
Department of Professional Regulation	0	1
Department of Public Aid	1	4
Department of Public Health	2	0
Department of Revenue	1	1
Secretary of State	1	0
Totals	11	8
Percentage	58%	42%

AGENCY RESPONSE TO 1996 JCAR ACTION (Cont.)

Agency	Appropriate Response	Inappropriate Response
<i>RECOMMENDATIONS</i>		
Department of Commerce & Community Affairs	1	0
Department of Central Management Services	1	0
Department of Children & Family Services	1	1
Comptroller	1	0
Department of Corrections	1	0
Gaming Board	1	0
Department of Human Rights	1	0
Law Enforcement Officers Training & Standards Board	0	1
Department of Public Aid	2	2
Department of Public Health	3	0
Secretary of State	1	0
Department of State Police	1	0
Totals	14	4
Percentage	78%	22%

PUBLIC ACT REVIEW

Section 5-105 of the Illinois Administrative Procedure Act [5 ILCS 100/5-105] requires the Joint Committee on Administrative Rules to maintain a review program to monitor the implementation of new laws and changes in law through State agency rulemaking activities. The Committee fulfills this statutory obligation through its Public Act review program.

Under this program, the Committee staff annually reviews each new Public Act and makes a preliminary determination as to whether rulemaking might be necessary for proper implementation. After the list has been culled of those obviously not requiring rulemaking (appropriations, criminal and civil law, local government issues), the affected State agency is contacted for its opinion. If necessary, these written contacts are followed up with discussion between JCAR and the agency.

The final list of Public Acts for which JCAR and the agency agree that rulemaking is warranted is then monitored by the Committee as long as necessary to insure that progress is made toward implementation. The primary goal of the Committee in this program is to ensure that appropriate rules are put into effect in a timely manner, as required by Section 5-105 of the IAPA.

If suitable progress is not made, JCAR, by the vote of a majority of its members, can initiate an investigation into existing rules of the agency. If, after the agency's appearance before the Committee to explain its failure to adopt anticipated rules, the JCAR members are not satisfied with the agency response, the Committee can object to the agency's conduct and may initiate further legislation to clarify the issue.

The Committee reviewed 1,280 Public Acts that were enacted by the 87th General Assembly, 692 by the 88th G.A. and 719 by the 89th G.A.

Frequently an agency is prompted to complete necessary rulemaking by conversation with JCAR or the agency enters voluntarily into written Agreements with JCAR to more thoroughly implement statutory requirements. At other times, JCAR votes a Recommendation or Objection based on a need for additional rulemaking. Four such actions were taken in 1991, 7 in 1992, 1 in 1993, 8 in 1994, 6 in 1995 and 2 in 1996. This need for further rulemaking is frequently because Public Acts have not been fully implemented.

More complete implementation of statute can also be prompted by JCAR in response to a public complaint. In June 1993, in response to a complaint, JCAR initiated an investigation into the State Board of Education's implementation of PA 87-652, the Sprinkler Law. SBE had delayed the adoption of rules implementing that law, and was instead referring school districts to a question and answer sheet the agency had prepared. In addition to not adopting rules in a timely manner, SBE was giving directives to school districts based on policy not in rules.

SBE appeared before JCAR and explained that it had been delaying adoption of the Sprinkler Law rules so the rulemaking could be combined with a broader rulemaking effort involving the entire life safety code for schools. At JCAR's request, SBE segregated the issues and proceeded to adopt rules implementing the Sprinkler Law.

JCAR aggressively follows its statutory mandate to monitor the implementation of Public Acts. However, the Committee is seldom required to press an agency to implement a new Public Act. Agencies generally respond to JCAR inquiries that they agree rulemaking is necessary and by stating an approximate date for commencement of rulemaking activity. In some instances, they offer valid responses as to why rulemaking will not be necessary. Occasionally, the JCAR inquiry brings to an agency's attention a Public Act relating to its programs that had escaped its notice. The Public Act review program can be helpful to both the legislature and the agencies in meeting their obligation to put the laws of the State of Illinois into effect in a timely and effective manner.

LEGISLATIVE ACTIVITY RELATING TO JCAR AND THE IAPA

JCAR reviews any proposed legislation that amends the Illinois Administrative Procedure Act and brings to agencies' attention any resulting changes in rulemaking procedures. Legislation involving issues that have recently come before JCAR is also followed. Under its IAPA mandate to continually seek to improve the rulemaking process, JCAR occasionally initiates legislation revising the IAPA. It also may propose legislation when rules review brings attention to a statutory insufficiency or lack of clarity or to enforce its Objections or Recommendations when an agency has refused to adhere to those Objections or Recommendations. The following summaries of legislation affecting JCAR and the rulemaking process cover the 87th, 88th, and 89th General Assemblies.

Four significant Public Acts were passed to amend the IAPA during the 87th G.A. PA 87-823 (eff. 7/1/92) reformatted the Act into articles with new Section numbers, added a new definition of not-for-profit corporations to the small business impact provisions, provided DCCA more freedom to analyze small business impact, and broadened allowable incorporations by reference. Article 10 of the Act required all agencies to adopt rules for contested case hearings and administrative law judge qualifications. PA 87-830 (eff. 1/17/92) added an expedited correction process to allow for speedy correction of nonsubstantive errors or inadvertent omissions or discrepancies found in adopted rulemakings. PAs 87-838 and 860 (eff. 1/24/92, 7/1/92) added 2 new Sections to the IAPA to permit Emergency Budgetary Act of Fiscal Year 1992 provisions and budget reduction initiatives for FY 93 to be implemented through emergency rulemaking. These 2 Sections became obsolete and were repealed in 1994.

In addition to the Public Acts amending the IAPA, PA 87-1213 (eff. 9/26/92) added a new Section to the Environmental Protection Act [415 ILCS 5/28.5] creating a fast-track process for adopting clean air rules required by the federal government before 12/31/96. The Section specified shorter time frames for PCB consideration but retained requirements for *Illinois Register* publication, 2nd Notice, and JCAR review.

The 88th G.A. saw the passage of 3 Acts amending the IAPA and an additional Act impacting the rulemaking process. PA 88-535 (eff. 1/26/94) amended the IAPA and Legislative Information System Act [25 ILCS/145] to require the *Illinois Register* to be maintained on the LIS database, place the Register and Code in the public domain, and make both available for purchase through electronic medium. Funds generated by such sales go to the G.A. Computer Equipment Revolving Fund. This Act brought about significant changes in JCAR and SOS Code Unit operations. The weekly *Illinois Register* is now published using the LIS/JCAR Code database and several private companies, as well as the Secretary of State, publish editions of the *Illinois Administrative Code*.

PA 88-667 (eff. 9/16/94) amended the IAPA to increase public awareness of and participation in the rulemaking process. The 1st Notice public comment period was extended to a full 45 days that an agency cannot shorten, and an agency representative was required to be present at public hearings

to respond to questions. Twice-yearly publication of Regulatory Agendas to inform the public concerning anticipated agency regulatory activity was made mandatory rather than permissive. Also, the public was allowed to *request* that an agency initiate rulemaking, rather than *petition* an agency to do rulemaking, thereby simplifying the public's ability to influence agency rules. Two other provisions impacting upon JCAR operation required that agencies' 2nd Notice submittals be in a form specified by JCAR (amendments by line number, as in the G.A. bill amendment process) and required agencies to respond to emergency and peremptory rulemaking Suspensions within 30 days.

PA 88-533 (eff. 1/18/94) added rules adopted under the Vehicle Emissions Inspection Law of 1995 to an existing IAPA general rulemaking exemption for certain PCB rules.

PA 88-61 (eff. 7/7/93) did not amend the IAPA but was unique in amending the Housing Affordability Impact Note Act [25 ILCS 82] to extend impact note requirements to rules (formerly, only bills) that directly increase or decrease the cost of constructing, purchasing, selling, or owning a single family residence.

In the 89th G.A., two Public Acts amending the IAPA impacted on the rulemaking process. PA 89-21 (eff. 6/6/95) provided that Fiscal Year 1996 budget reduction initiatives and other provisions of the Act may be implemented through emergency rulemaking. PA 89-499 (eff. 6/28/96) mirrored PA 89-21 for Fiscal Year 1997. These provisions are the same type of IAPA exemption enacted for FY 92 and FY 93.

The last six years have seen the *Illinois Register* and *Illinois Administrative Code* move into the public domain, creating more public accessibility to agency rules. Other amendments to the IAPA have improved public notice of agency rulemaking activities and enhanced opportunities for public comment. Improvements concerning incorporations by reference and 2nd Notice amendments have made the process less cumbersome for both JCAR and the agencies. One trend that cannot be viewed as progressive, however, is the addition of emergency rulemaking exemptions to the IAPA. Speedy response to budget reductions has been given as the rationale, but the Illinois Administrative Procedure Act's regular emergency rulemaking provisions suffice for that purpose.

JUDICIAL ACTIVITY RELATING TO

JCAR AND THE IAPA

Since the Joint Committee's function is closely related to the interpretation of the Illinois Administrative Procedure Act (IAPA), the Joint Committee monitors and reports on court decisions and Attorney General opinions that affect the interpretation of the Act. One of the enumerated responsibilities of the Joint Committee under the Act is "to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking" [5 ILCS 100/5-105(c)].

In *Eastman Kodak Company v. Fair Employment Practices Commission*, 86 Ill. 2d 60, 426 N.E.2d 877, 55 Ill. Dec. 522 (1981), the Supreme Court affirmed a decision of the Second District Appellate Court that held the Commission's rules valid. In 1975, the Commission issued an order in which it found that Kodak's affirmative action plan for its Oakbrook facility did not comply with the Commission's rules. As a result, Kodak's name was taken off the list of eligible bidders for public contracts with the State of Illinois.

The Second District Appellate Court affirmed the Commission order. Kodak was then granted leave to appeal by the Illinois Supreme Court. Before that court, Kodak contended that the affirmative action rules should be voided as exceeding statutory authority and because they conflicted with Title VII of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000e et seq.) by requiring "impermissible preferential hiring". The Supreme Court held that statutory language requiring parties to public contracts to "take affirmative action to insure that no unfair employment practice is committed" and allowing the Commission to "issue rules and regulations . . . for the purpose of enforcement and administration of" this provision supplied the requisite statutory authority. The court also held that the rules were not violative of federal law; it thus affirmed the decision of the appellate court and of the Commission.

In *Mobil Oil Corporation v. Johnson* (66 Ill. Dec 285, 442 N.E. 2d 846, 1982), the Supreme Court considered a crucial area in administrative law concerning the effectiveness of a rule promulgated prior to the enactment of the IAPA and its relationship with the requirement of due process. Mobil brought an action under the State Officers and Employees Money Disposition Act [30 ILCS 230] to compel the return of approximately \$8 million which it paid under protest pursuant to an assessment by the Department of Revenue under the Use Tax Act [35 ILCS 105]. The tax was assessed upon Mobil's use of three "refining fuels", which are produced during the process of refining crude oil. At issue was whether Mobil was prejudiced and denied due process because it was not given proper notice of an apparent change in Departmental policy regarding the taxability of the use of refinery fuels. In support, Mobil argued that the Department had never assessed the use of refinery fuels under the Use Tax Act or the sales of crude oil by Illinois producers under the Retailer's Occupation Tax Act. The circuit court held, *inter alia*, that the Department had violated the IAPA in developing its policy and method of imposing the tax.

The Supreme Court reversed, holding that Use Tax Rule 11 adopted by the Department in 1969 clearly expressed Department policy regarding the taxability of refining fuels. The Court determined that the IAPA did not require republication of the rule and found that the failure of the Department to previously assess the tax did not amount to a policy within the meaning of the Act. Thus, the Court held that Mobil

had adequate notice of the taxability of the use of refinery fuels and that the Department did not violate the provisions of the IAPA in assessing the tax.

Two decisions of the Illinois Appellate Court construing the IAPA in accordance with positions supported by the Committee are especially noteworthy. The cases involved an attempt by the Department of Public Aid to change the method by which the Department calculated Medicaid payments to nursing homes. In the first case (*Senn Park Nursing Center v. Miller*, 455 N.E.2d 153, 74 Ill. Dec. 123, 1983), the court held that the Department's failure to follow the IAPA rulemaking procedures invalidated the new method of calculating the Medicaid payments. The court stated that the definition of a "rule" found in Section 3.09 of the IAPA (now Sec. 1-70) should be broadly construed in order to safeguard the public's right to comment on proposed agency policies. The proposed change in calculating the Medicaid payments, the court ruled, fell within the Section 3.09 definition of rule since it was a statement of the general agency policy. However, since that policy had not been adopted in compliance with the IAPA rulemaking procedures, it was invalid.

In reaching its decision, the court narrowly construed the exceptions to the IAPA rulemaking procedures for matters relating to contracts and agency management.

The second case (*Senn Park Nursing Center v. Miller*, 455 N.E.2d 162, 74 Ill. Dec. 132, 1983) grew out of the Department's attempt to implement the same Medicaid policy change through emergency rulemaking after the circuit court had invalidated the proposed change as a violation of the general rulemaking provisions of the IAPA. The appellate court disagreed. Adopting the position long advocated by the Committee, the court held that agency created "emergencies" do not justify bypassing the opportunity for public comment guaranteed by usual rulemaking procedures. The Department's resort to emergency rulemaking, the court noted, was the result of "avoidable administrative failure" to properly promulgate rules complying with the requirements of the IAPA in the first instance. The Department was thereby precluded from relying upon its own mistakes to justify emergency rulemaking.

In *Senn Park Nursing Care Center v. Miller*, Director of Public Aid (104 Ill. 2d 169, 470 N.E.2d 1029 (1984)), the Illinois Supreme Court considered the appeal of the two *Senn Park* appellate court decisions cited above (*Senn Park I and II, respectively*) involving the same parties.

Senn Park I

In *Senn Park I*, the court considered the appeal of a circuit court decision finding that the Department of Public Aid's inflation update procedure for nursing home reimbursement was invalid. On December 14, 1979, DPA sent nursing home facilities copies of changes to the State Medicaid plan which included an amended procedure for calculating the inflation update procedure. DPA published notices of the amended inflation update procedure in the newspaper of the widest circulation in each Illinois city with over 50,000 population. The notice was not published in the *Illinois Register* because it was refused by that publication. The notices did not provide an address where public comments could be sent. Plaintiffs contended that this amended inflation update procedure was invalid because it was not promulgated in accordance with the rulemaking procedures set forth in the IAPA.

DPA argued that the amended update procedure was exempt from the notice and publication requirements by Section 5-35(c) of the IAPA (then Sec. 5(c)) because the State Plan is a contractual arrangement with the federal government. Section 5-35(c) stated that: "The notice and publication

requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts.”

After receiving approval from the legislative leaders, JCAR filed an amicus brief with the Illinois Supreme Court arguing that the inflation update procedure did not fall within the contracts exception. The Illinois Supreme Court agreed with the appellate court’s interpretation of the contracts exception in which the lower court stated:

We are persuaded that under the IAPA, as under the Federal APA, a matter comes under the contract exception only when contracts are clearly and directly involved. (See *Humana of South Carolina, Inc. v. Califano* (590 F.2d 1070, 1082 (D.C. Cir. 1978)). We believe that with regard to nursing homes, contracts, whether State - Federal or Agency - providers, are not clearly and directly involved, but rather, are only incidental means to the end of providing nursing home care for needy individuals. Accordingly, we conclude that the amended inflation update procedure is not a matter relating to contracts within the meaning of the IAPA. (118 Ill. App. 3d 504, 511)

The court also stated that it is clear that the rulemaking procedure is intended to give interested persons an opportunity to submit their views and comments on rulemaking changes and that an agency must consider all submissions received. The court acknowledged that there are certain statutory exceptions to the notice and comment procedures, but that exceptions are of a limited nature and should be appropriately applied.

The court also agreed with the appellate court ruling that the amended inflation update procedure fell within the purview of the IAPA because the Illinois Public Aid Code incorporates the IAPA and the Code specifically requires rulemaking pursuant to the IAPA “during the process of establishing the payment rate for skilled nursing and intermediate care services, or when a substantial change in rates is proposed,” in order to provide “an opportunity for public review and comment on the proposed rates prior to their becoming effective”. [305 ILCS 5/5-5.7] (118 Ill. App. 3d 504, 512) The court found that the amended procedure fell within the definition of “rule” found in the IAPA and thus the failure of DPA to follow the notice and comment procedures required by the IAPA rendered the amended procedure invalid.

Senn Park II

Following the decision of the appellate court in *Senn Park I*, DPA promulgated Emergency Rule 4.14221 implementing the amended inflation update procedure pursuant to Section 5.02 of the IAPA (now 5-45).

In *Senn Park II*, plaintiffs filed a complaint for declaratory judgement in the Circuit Court of Cook County, asking the court to declare Emergency Rule 4.14221 void because there was no “emergency” as that term is defined in Section 5-45 of the IAPA, and because the rule was promulgated in violation of federal notice requirements. On December 30, 1980, the emergency rule in question was withdrawn.

On appeal, the appellate court held that although the rule was withdrawn, the validity of the rule was at issue in order to determine the amount of reimbursement the plaintiffs were entitled to under the writ of mandamus to be issued in *Senn Park I*. The appellate court further held that the circuit court had erred in finding the emergency rule valid because there was no emergency as that term is defined under the IAPA and because the defendant failed to comply with the notice and comment requirements of governing federal regulations.

The Illinois Supreme Court affirmed both appellate *Senn Park* court decisions.

In *Sleeth v. Illinois Department of Public Aid* (125 Ill. App. 3d 847, 466 N.E.2d 703 (1984)), the appellate court considered an appeal from a Department of Public Aid decision to terminate disability benefits in five cases. The court found that the procedure utilized by the Department (Manual Release No. 83.5) that required applicants who were denied disability benefits to submit proof of disability within 14 days after the filing of appeal, was a “rule” under the IAPA. The IAPA states:

“Rule” means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an Agency and not affecting private rights or procedures available to persons or entities outside the Agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

The Department contended that Manual Release 83.5 was merely intra-office memoranda, not subject to the rulemaking requirements of the Act. The court reasoned that the memorandum in question affected private rights and procedures available to persons outside the DPA and that this type of statement by an agency is specifically included within the definition of “rule” under the Act. Since the memorandum was not properly promulgated pursuant to the procedures set forth in the Act, the court held the rule invalid and determined that the procedures followed by the Department violated State law.

The IAPA was written to promote the legislative oversight of administrative rulemaking in Illinois. The Act also includes certain guarantees to persons who challenge agency rules. One of these safeguards is found in Section 10-55 of the IAPA [5 ILCS 100/10-55], which provides for attorney’s fees in cases in which agency rules are invalidated by a court.

In the *Board of Education of School District No. 170, Cook County v. Illinois State Board of Education* (122 Ill. App. 3d 471, 481 N.E.2d 567 (1 Dist. 1984)), the plaintiffs sought to retroactively apply Section 10-55 of the IAPA, which allows the recovery of attorney’s fees, for litigation commenced prior to the effective date of that Section. The litigation in question in this case was pending on appeal before the Illinois Supreme Court on January 1, 1982 when that Section went into effect.

The court investigated the legislature’s intent in passing the legislation creating Section 10-55 of the IAPA. The court concluded that the legislature had a two-fold purpose in enacting Section 10-55: to discourage enforcement of invalid rules and to give those subject to regulation incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation. The court found that neither of these goals would be furthered by the imposition of retroactive application of Section 10-55 and liability in this case, and, therefore, declined to retroactively apply this Section of the Act.

In February 1986, the Attorney General issued an opinion interpreting Section 26(h)(11) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/26(h)(11)]. The Attorney General stated that, in order for the Board to be able to control the conduct of inter-track wagering and to prevent the practices detrimental to the public, the Racing Board had the authority to promulgate regulations governing the accounting practices of racing organizations, and, therefore, had the authority to promulgate reasonable rules to implement Section 26(h)(11). (Atty. Gen. Op. 84-U01)

In *Kaufman Grain Company, Inc. v. Director, Department of Agriculture* (128 Ill. Dec. 654, 534 N.E.2d 1259 (1989)), the Fourth District Appellate Court of Illinois held that the Department of Agriculture had no statute or rule which allowed it to settle disputes between a grain producer and a grain dealer or a grain warehouse. The Department improperly relied on policy that was not properly promulgated as rules in accordance with the IAPA and, therefore, was without authority to adjudicate such grain disputes.

The *Kaufman* case is also significant for the ruling of the court concerning attorney's fees. Section 10-55 of the IAPA provides that in any case in which a party has any administrative rule invalidated by a court for any reason, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. The appellate court ruled that Kaufman was entitled to the award of attorney's fees which it reasonably incurred in this litigation, including the fees incurred in the proceedings before the Department. The court stated that Section 10-55 of the IAPA gives those subject to regulation an incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation. Therefore, the court awarded fees for the proceedings before the Department, as well as fees incurred in administrative review proceedings, noting that proceedings before an administrative agency are quite often more costly and time consuming than administrative review proceedings.

The *Kaufman* case illustrates recent trends of the courts to rule unfavorably against agencies that have not promulgated their policies properly under the IAPA. The court continues to interpret the IAPA in accordance with *Senn Park Nursing Center v. Miller* (104 Ill.2d 169, 83 Ill. Dec. 609, 470 N.E.2d 1029 (1984)), in which the Illinois Supreme Court ruled a policy of the Department of Public Aid invalid because the policy was not promulgated as a rule. The *Kaufman* decision specifically cites *Senn Park* and further strengthens the precedent it established.

In *Coronet Insurance Company v. John E. Washburn, Director of Insurance of the State of Illinois* (146 Ill. Dec. 973, 558 N.E.2d 1307, 201 Ill. App. 3d 633 (1990)), the First District Appellate Court of Illinois held that an administrative agency may enact rules and regulations as limited by the authorizing statutory language; that an administrative rule carries with it the same presumption of validity as the statute; and a rule which is consistent with the spirit of the statute and furthers its purpose will be sustained. The appellate court also ruled that the Director of Insurance's alleged failure to give at least 45 days notice of a proposed rule to the general public did not constitute violation of the IAPA, since the Act provides that changes in the text of a proposed rule may be made during the first notice period and that such changes need not be published again prior to submission to JCAR.

In *Kerr-McGee Chemical Corporation v. Illinois Department of Nuclear Safety* (149 Ill. Dec. 674, 561 N.E.2d 1370 (1990)), the Fourth District Appellate Court ruled that Kerr-McGee would not be barred from asserting any of its objections to disputed rules promulgated by the Department pertaining to nuclear waste after they have been approved by the Nuclear Regulatory Commission, despite the statute which requires a challenge to an administrative rule based on noncompliance with the IAPA within two years after the effective date of the rule, because the limitation deals only with procedural challenges concerning the promulgation of rules. The subject of Kerr-McGee's complaint was not a procedural challenge, but rather that the rules were arbitrary, capricious and contrary to law. Kerr-McGee maintained that if it waited until the Nuclear Regulatory Commission grants the Department the permission to regulate nuclear waste sites, it might never be able to challenge the rules according to the two-year limitation period on actions to challenge rules for noncompliance with the IAPA. Kerr-McGee did not challenge the rules on any procedural issue subject to the two-year limitation.

In *Balmoral Racing Board v. Illinois Racing Board* (151 Ill. 2d 367, 603 N.E. 2d 489 (1992)), the Illinois Supreme Court held, *inter alia*, that the contested case provisions (adjudicatory hearing procedures) of the IAPA apply to racing date hearings conducted by the Illinois Racing Board.

In *Berrios v. Rybacki* (236 Ill.App. 3d 140, 603 N.E. 2d 659 (1992)), the First District Appellate Court held that award of attorneys fees under the IAPA for invalidation of an administrative rule did not warrant the application of a multiplier of three to reflect the contingent nature of the action, but that legal fees were to be limited to an amount for reasonable expenses incurred or paid in the particular successful action.

In *CIPS v. Illinois Commerce Commission* (268 Ill.App. 3d. 471, 644 N.E. 2d 817 (1994)), the Fourth District Appellate Court ruled that JCAR did not create an impermissible filing prohibition when it informed the ICC it would lift its filing prohibition to ICC's proposed rule formulating rental rates for cable TV attachments to utility poles if the ICC removed allocation of the portion of pole neutral space to cable television.

OTHER STATES

Wisconsin has a legislative committee, similar to the Joint Committee on Administrative Rules, that reviews administrative rules and has the power to reject or suspend such rules. This power has been challenged in the courts based on the argument that it violates the principle of separation of powers. In *Martinez v. Department of Industry, Labor, and Human Relations* (478 N.W.2d 582 (1992)), the Supreme Court of Wisconsin upheld Wisconsin's Administrative Procedure Act, which allows the Wisconsin Joint Committee to Review Administrative Rules to temporarily suspend an agency rule by a majority vote of the Committee. The Court determined that the Committee's suspension power was "delegated to it pursuant to legitimate legislative standards, and, furthermore, sufficient procedural safeguards are available to prevent unauthorized decisions by the Committee."

The Illinois APA contains a provision that allows the Committee to prohibit the filing of rules with the Secretary of State for 180 days, if it is determined that the rulemaking would be objectionable and would constitute a serious threat to the public interest, safety or welfare. The Committee may then introduce a joint resolution in the General Assembly stating that the General Assembly desires to continue the prohibition of the proposed rulemaking. If the joint resolution passes both houses, the Secretary of State may not accept the proposed rulemaking for filing. The Committee has voted to temporarily prohibit the filing of rulemaking on numerous occasions, but the Committee has not taken the steps necessary to permanently continue a filing prohibition. However, in one instance involving the Department of Financial Institution's revision of rules regulating check cashing fees charged by currency exchanges, the Committee was only a few days from initiating a joint resolution when agreement was reached.

Court decisions in numerous jurisdictions and cases have upheld the legality of the legislature to delegate to executive agencies the authority to create administrative law, provided that standards governing the parameters of the delegated rulemaking authority are prescribed in the statutory law.

**COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1996**

AGENCY	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Administrative Rules, Joint Committee on	1	1	-	-	-	3	5	-	-	-	-	1	7	2	-	-
Aging, Department on	6	4	4	6	3	2	1	3	4	5	2	5	2	5	3	6
Agriculture, Department of	16	24	18	41	15	11	26	21	16	7	2	18	17	13	22	15
Alcoholism and Substance Abuse, Department of [1]	2	3	3	4	5	6	3	6	-	1	6	4	1	1	3	5
Asbestos Abatement Authority	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Attorney General	-	3	2	3	2	2	2	3	-	1	1	1	-	-	1	-
Auditor General	1	4	1	3	1	-	-	-	1	2	-	-	1	-	2	-
Banking Board of Illinois, State	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-
Banks and Real Estate, Commissioner of [7]	7	7	1	1	2	7	6	10	5	5	12	8	2	2	7	11
Capital Development Board	-	3	-	2	9	4	6	3	2	-	-	2	1	-	2	11
Carnival-Amusement Safety Board	-	-	-	-	-	2	3	-	2	1	-	2	1	1	-	-
Central Management Services, Department of [2]	16	13	16	18	10	14	11	11	11	14	14	19	14	6	16	15
Children & Family Services, Department of	1	26	10	23	14	22	3	9	5	7	6	12	13	16	22	23
Civil Service Commission	2	-	2	-	-	-	-	-	-	-	-	-	-	1	-	-
Civil Service Merit Board, University	3	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Civil Service System, State Universities	-	-	-	2	1	1	1	2	1	-	-	-	1	-	1	-
Commerce & Community Affairs, Department of	1	8	4	20	29	29	18	17	17	19	16	12	8	7	4	5
Commerce Commission	10	21	19	43	22	20	86	24	26	14	16	16	16	16	10	10
Community College Board	-	1	2	3	2	2	2	5	5	3	2	3	2	4	-	5
Community Development Finance Corporation	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Comptroller	3	4	4	3	1	5	3	4	2	2	-	1	2	3	-	1
Comptroller's Merit Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-
Cook County Local Records Commission	-	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-
Corrections, Department of	24	15	66	-	1	10	8	5	8	7	4	5	6	-	4	4
Court of Claims	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Criminal Justice Information Authority	-	-	-	-	1	1	2	-	1	2	-	2	2	-	-	1
Dangerous Drugs Advisory Council	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Developmental Finance Authority	-	-	-	-	-	4	1	-	-	-	-	2	-	-	-	-
Developmental Disabilities Planning Council	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
East St. Louis Community College, Board of Trustees	-	2	1	-	1	-	-	-	-	-	-	-	-	-	-	-
Education, State Board of	8	3	7	5	12	30	12	9	10	10	5	9	10	10	10	7
Educational Facilities Authority	-	2	1	1	-	2	1	-	1	-	-	-	1	-	1	1
Educational Labor Relations Board	-	-	-	4	3	-	-	2	5	-	-	2	-	-	-	-
Educational Opportunity, Consortium For	-	-	-	-	-	1	-	-	-	2	1	-	-	-	-	-
Elections, State Board of	3	7	3	4	1	-	3	-	7	3	2	-	2	1	1	2
Emergency Management Agency [3]	2	9	7	-	-	3	2	2	-	-	1	2	4	-	-	-

**COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1996**

AGENCY	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Employment Security, Department of	-	-	-	3	13	10	5	19	16	11	14	8	13	8	3	2
Environmental Protection Agency	16	18	20	21	10	8	14	16	8	6	4	14	4	3	6	5
Ethics, Board of	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Experimental Organ Transplantation Procedures Board	-	-	-	-	1	1	-	1	1	-	-	-	-	-	-	-
Export Development Authority	-	-	-	-	1	1	1	1	-	-	-	-	-	-	-	-
Farm Development Authority	-	1	1	2	1	2	3	2	-	-	-	1	1	-	-	-
Financial Institutions, Department of	3	-	3	9	4	2	3	4	1	2	1	4	3	4	4	1
Fire Marshal	1	7	3	5	3	3	5	1	4	4	5	6	1	3	6	5
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
Governors of State Colleges & Universities, Board of	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-
Governor's Purchased Care Review Board	1	-	1	1	1	-	1	-	-	-	-	-	-	-	-	-
Guardianship & Advocacy Commission	1	2	2	1	3	-	-	-	-	1	-	1	-	-	-	-
Health Care Cost Containment Council	-	-	-	-	10	1	3	2	1	1	3	2	3	2	5	-
Health Coordinating Council, Statewide	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Health Facilities Authority	1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	4
Health Facilities Planning Board	-	-	-	2	1	9	3	3	7	-	3	4	5	4	1	2
Health Finance Authority	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hearing Aid Consumer Protection Board	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-
Higher Education, Board of	5	-	-	-	5	3	-	1	6	-	-	1	1	-	-	-
Higher Education Loan Authority, Independent	-	-	2	1	1	2	1	-	-	-	-	-	-	-	-	-
Historic Preservation Agency	-	-	-	-	-	-	-	-	-	1	2	2	-	-	-	1
Housing Development Authority	-	-	3	3	5	1	1	1	1	3	2	5	1	3	1	-
Human Rights Commission	1	1	2	2	-	1	-	-	-	-	-	-	-	-	-	1
Human Rights, Department of	5	4	3	1	-	1	-	-	-	-	-	1	1	3	1	1
Industrial Commission	2	3	1	2	7	2	-	-	-	6	1	2	-	-	4	-
Insurance, Department of	13	13	4	25	9	11	9	12	13	13	12	13	15	6	19	13
Investments, Illinois State Board of	-	1	2	-	-	-	-	-	1	-	-	-	-	-	-	-
Labor, Department of	7	8	8	5	3	3	1	2	1	3	2	9	-	1	4	2
Law Enforcement Commission	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Law Enforcement Training & Standards Board	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Legislative Information System	-	2	1	-	-	-	-	-	-	1	-	-	-	-	-	-
Legislative Space Needs Commission	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-
Lieutenant Governor	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-
Liquor Control Commission	-	-	1	-	-	-	-	1	-	-	-	-	1	-	1	-
Local Gov. Law Enforcement Officers Training Board	-	-	4	1	-	2	1	-	2	2	1	1	-	-	-	-
Local Government Records Commission	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-
Local Labor Relations Board	-	-	-	4	1	8	-	4	-	4	-	-	-	-	-	-
Lottery, Department of	-	-	-	-	-	2	-	2	-	-	-	3	-	2	1	1
Mental Health & Developmental Disabilities, Dept. of	8	3	3	5	8	2	3	3	3	7	6	7	2	6	4	11

**COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1996**

AGENCY	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Military Affairs, Department of [5]	-	-	-	-	1	-	-	2	-	-	-	-	-	-	-	-
Mississippi River Parkway Commission	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	-	-	-	2	2	-	-	-
Natural Resources, Department of [10]	116	41	41	41	44	84	36	24	58	48	60	73	34	25	55	31
Nature Preserves Commission	-	-	1	-	-	-	-	-	-	-	-	-	1	1	-	-
Northeastern Illinois Planning Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Nuclear Safety, Department of	2	3	3	4	3	19	7	7	8	8	2	10	15	8	5	11
Nutrition, State Council on	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	13	18	23	21	32	43	53	73	71	54	36	29	24	66	11	34
Prairie State 2000 Authority	-	-	-	-	-	2	-	-	-	-	-	1	-	-	-	-
Prisoner Review Board	-	1	-	-	1	-	-	2	-	-	-	-	-	-	-	-
Professional Regulation, Department of [6]	15	16	15	26	17	10	14	14	15	7	13	16	19	17	13	17
Property Tax Appeal Board	66	40	86	67	94	82	87	107	67	94	78	84	65	43	75	53
Public Aid, Department of	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Office of Public Counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Public Health, Department of	44	92	91	53	25	44	27	50	45	48	28	46	53	28	29	30
Racing Board	10	22	9	7	13	14	9	11	5	40	17	20	25	27	37	16
Records Commission, State	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Regents, Board of	2	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-
Rehabilitation Services, Department of	1	6	23	28	13	57	45	25	27	32	18	14	31	20	20	22
Retirement System, State Employees	3	4	1	2	3	-	-	1	-	2	1	1	1	-	-	1
Retirement System, Teachers	-	-	-	-	2	-	-	1	-	1	1	2	1	1	1	1
Retirement System, State Universities	-	-	1	-	-	-	-	-	1	1	-	-	-	-	-	1
Revenue, Department of	45	14	11	9	7	24	19	20	24	35	25	9	20	20	21	32
Rural Bond Bank	-	-	-	-	-	-	-	-	-	3	-	1	-	-	-	-
Savings and Loan Advisory Board	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-
Secretary of State	26	14	31	20	19	8	18	30	31	21	14	13	21	13	14	21
Southern Illinois University Board of Trustees	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Sports Facilities Authority	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-
State Labor Relations Board	-	-	-	4	1	8	-	4	-	4	-	-	4	-	-	5
State Mandates Board of Appeals	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
State Police, Department of	-	1	2	2	1	2	1	4	-	2	1	3	2	-	1	4
State Police Merit Board [8]	-	1	1	4	1	2	2	2	2	-	1	2	1	1	1	2
State's Attorneys Appellate Prosecutor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Student Assistance Commission [9]	11	4	2	1	14	10	13	5	9	1	5	10	15	13	8	19
Toll Highway Authority	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transportation, Department of [10]	17	5	5	10	16	23	16	25	18	15	32	21	28	18	22	12
Travel Control Board, Higher Education	1	2	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Travel Control Board, Legislative	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1

COMPARISON OF GENERAL RULEMAKING BY AGENCY 1981 THROUGH 1996

AGENCY	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Travel Regulation Council	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Treasurer	-	-	1	1	-	-	-	-	4	-	2	5	7	-	-	-
University of Illinois, Board of Trustees	1	-	1	1	1	1	-	2	2	-	-	1	1	1	1	-
U of I Board of Examiners (CPA Licensure)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Veterans' Affairs, Department of	2	-	1	1	-	5	7	-	-	-	-	-	-	-	-	-
Obsolete Boards & Commissions	8	1	-	-	-	1	-	-	-	-	-	5	-	-	1	-
TOTALS	563	510	583	604	532	696	614	627	589	586	483	583	537	440	487	488

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] (vacant) [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990 and combined with the Commissioner of Banks and Trusts to become the Commissioner of Banks and Real Estate in 1996. The new office also absorbed the real estate licensing functions of DPR. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, ENR (previously, Institute of Natural Resources), M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources.

COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1983 THROUGH 1996

AGENCY	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Abandoned Mined Lands Reclamation Council [10]	-	-	-	2	-	-	-	-	-	1	-	-	-	-
Aging, Department on	-	-	-	-	-	-	1	-	3	5	1	1	2	1
Agriculture, Department of	-	1	2	1	1	2	1	-	1	-	3	1	1	1
Alcoholism and Substance Abuse, Department of [1]	-	1	1	2	1	1	-	-	1	-	8	-	-	1
Attorney General	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Banking Board of Illinois, State	-	-	-	-	-	-	-	-	-	-	-	-	1	-
Banks and Trust Companies, Commissioner of	-	-	-	2	-	-	-	-	-	1	-	-	-	-
Capital Development Board	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Carnival-Amusement Safety Board	-	-	-	1	-	-	1	1	-	1	-	-	-	-
Central Management Services, Department of [2]	3	13	6	6	4	8	3	4	3	7	-	2	1	8
Children & Family Services, Department of	1	-	-	1	1	-	-	2	4	1	2	4	6	-
Commerce & Community Affairs, Department of	-	-	6	5	2	1	8	2	2	1	3	-	-	-
Commerce Commission	5	3	1	5	3	4	2	-	1	1	-	2	-	2
Community College Board	1	2	-	-	-	-	-	1	-	-	-	-	-	-
Comptroller	-	-	-	-	-	-	-	-	-	-	1	1	-	-
Conservation, Department of [10]	4	1	7	2	1	7	6	3	4	6	4	4	4	-
Corrections, Department of	-	-	-	-	-	-	-	3	-	1	4	-	-	1
Criminal Justice Information Authority	-	-	1	-	1	-	1	-	-	-	-	-	-	1
Development Finance Authority	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Education, State Board of	3	-	9	5	2	-	2	2	-	-	-	1	1	2
Educational Labor Relations Board	-	4	1	-	-	1	1	-	-	1	-	-	-	-
Educational Opportunity, Consortium For	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Elections, State Board of	1	2	-	-	-	-	-	1	-	-	1	-	1	1
Emergency Management Agency [3]	-	-	-	-	1	-	-	-	-	-	-	-	-	-
Employment Security, Department of	-	3	-	-	-	4	5	1	-	2	2	2	1	-
Environmental Protection Agency	-	2	2	2	3	-	1	-	-	1	-	-	1	-
Experimental Organ Transplantation Procedures Board	-	-	1	-	-	-	-	-	-	-	-	-	-	-
Export Development Authority	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Farm Development Authority	1	1	2	3	-	-	-	-	-	-	-	-	-	-
Financial Institutions, Department of	-	-	1	1	1	-	-	1	-	1	1	-	-	1

COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1983 THROUGH 1996

AGENCY	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Fire Marshal	1	2	-	2	-	-	3	1	-	-	2	-	-	-
Gaming Board	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Health Care Cost Containment Council	-	-	-	-	-	-	-	-	-	-	3	1	1	-
Health Coordinating Council, Statewide	-	-	-	-	-	-	-	-	-	2	-	-	-	-
Health Facilities Planning Board	-	-	-	-	-	-	-	-	-	4	1	-	2	-
Higher Education, Board of	-	1	-	-	-	-	1	-	-	-	-	-	-	-
Higher Education Loan Authority, Independent	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Housing Development Authority	1	1	1	-	1	-	-	3	-	2	1	2	1	-
Human Rights Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Human Rights, Department of	-	-	-	-	-	-	-	-	-	-	-	-	-	2
Industrial Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance, Department of	-	2	2	2	-	-	-	4	-	-	-	-	-	-
Investments, Illinois State Board of	3	-	1	5	-	-	1	-	-	1	4	-	1	-
Labor, Department of	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Labor, Department of	3	3	2	-	-	-	-	1	1	-	1	1	-	-
Legislative Information System	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Local Gov. Law Enforcement Officers Training Board	1	-	-	1	-	-	-	-	-	1	-	-	-	-
Local Labor Relations Board	-	4	-	-	-	-	-	-	-	-	-	-	-	-
Lottery, Department of	-	-	-	2	-	-	-	-	-	-	-	-	-	-
Mental Health & Developmental Disabilities, Dept. of	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Mines & Minerals, Department of [10]	1	-	-	-	-	-	-	2	1	8	-	-	2	-
Motor Vehicle Theft Prevention Council	-	-	-	-	-	-	-	-	1	-	1	2	-	-
Nuclear Safety, Department of	-	-	-	-	-	-	-	-	1	1	-	-	-	-
Pollution Control Board	1	3	3	2	1	1	-	-	-	-	2	1	2	1
Prairie State 2000 Authority	-	-	-	2	-	1	-	1	-	-	3	1	1	1
Professional Regulation, Department of [6]	5	6	1	1	3	2	6	-	5	2	-	-	-	-
Public Aid, Department of	2	6	6	9	18	17	15	18	19	27	17	6	29	15
Public Health, Department of	2	2	2	3	1	18	3	13	8	4	21	6	5	13
Racing Board	2	1	2	-	-	1	1	-	2	1	3	1	4	1
Rehabilitation Services, Department of	-	-	-	3	-	-	4	-	1	6	23	1	1	1
Retirement System, State Employees	-	1	1	-	-	-	-	-	-	-	-	-	-	-
Retirement System, Teachers	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Revenue, Department of	-	1	-	2	-	4	2	1	3	2	5	-	3	2
Rural Bond Bank	-	-	-	-	-	-	-	3	-	1	-	-	-	-

COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1983 THROUGH 1996

AGENCY	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Savings & Residential Finance, Commissioner of [7]	-	-	1	1	1	4	-	1	1	2	-	1	4	-
Secretary of State	3	3	6	2	-	-	1	-	3	2	5	2	1	7
Sports Facilities Authority	-	-	-	-	-	2	-	-	-	-	-	-	-	-
State Labor Relations Board	-	4	-	-	-	-	-	-	-	-	-	-	-	-
State Mandates Board of Appeals	-	-	1	-	-	-	-	-	-	-	-	-	-	-
State Police, Department of	-	-	-	1	-	-	-	1	1	1	-	-	-	2
State Police Merit Board [8]	-	2	-	-	-	-	1	-	-	1	-	-	-	1
Student Assistance Commission [9]	1	-	-	2	2	1	-	1	5	2	3	1	1	2
Transportation, Department of [10]	-	1	1	1	2	-	-	-	-	1	-	1	-	-
Travel Regulation Council	-	-	-	1	-	-	-	-	-	-	-	-	-	-
Treasurer	-	-	1	-	-	-	-	-	-	-	-	-	-	-
University of Illinois, Board of Trustees	1	-	-	-	-	-	-	-	-	-	2	-	1	-
Veterans' Affairs, Department of	-	-	-	1	-	-	-	-	-	-	-	1	-	-
Obsolete Boards & Commissions	-	-	-	1	1	-	-	-	-	-	-	-	-	-
TOTALS	49	78	74	87	51	78	71	71	71	102	129	47	79	70

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes rules of the Institute of Natural Resources, which predated the Department. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources.

COMPARISON OF PEREMPTORY/EXEMPT RULEMAKING BY AGENCY
1983 THROUGH 1996

AGENCY	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Agriculture, Department of	-	-	9	10	9	7	5	5	4	6	4	7	5	5
Central Management Services, Department of [2]	-	-	-	6	7	7	3	4	2	2	1	3	6	4
Children & Family Services, Department of	-	1	-	-	-	-	-	-	-	-	-	-	-	-
Commerce Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Conservation, Department of [10]	-	-	2	-	-	2	-	-	-	-	-	-	-	-
Corrections, Department of	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Education, State Board of	1	-	-	-	-	-	-	-	-	-	2	-	-	-
Employment Security, Department of	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Pollution Control Board	10	11	9	14	10	-	-	-	-	-	-	-	-	-
Public Aid, Department of	3	9	2	3	4	2	1	1	1	1	1	30	20	17
Public Health, Department of	-	1	-	-	-	-	-	-	-	-	-	-	-	1
Rehabilitation Services, Department of	-	-	-	-	1	1	-	-	-	-	-	-	-	-
Retirement System, State Employees	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Revenue, Department of	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transportation, Department of [10]	-	-	-	-	1	-	-	-	-	-	-	-	-	-
Travel Regulation Council	-	-	-	-	-	-	1	-	-	-	-	-	-	-
Treasurer	-	-	-	-	1	-	-	-	-	-	-	-	-	-
TOTALS	16	22	23	33	33	19	10	10	28	34	29	40	32	27

[1] DASA, once a division of Dangerous Drugs Commission, became a separate agency in 1984. [2] The Depts. of Personnel and Administrative Services were combined in 1982 and the name was changed to Dept. of Central Management Services. [3] Includes Emergency Services & Disaster Agency, which was renamed IEMA in 1992. [4] Includes rules of the Institute of Natural Resources, which predated the Department. [5] The Military & Naval Department became the Department of Military Affairs in 1988. [6] The Department of Registration & Education became DPR in 1988. [7] Commissioner of Savings & Loan Associations became the Commissioner of Savings & Residential Finance in 1990. [8] Until 1986, the Dept. of Law Enforcement Merit Board. [9] The State Scholarship Commission became ISAC in 1989. [10] In 1995, DOC, M&M, AMLRC, and DOT Waterways Division were merged into the Department of Natural Resources.

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

[5 ILCS 100]

ARTICLE 1. TITLE AND GENERAL PROVISIONS

Section 1-1. Short Title.

This Act may be cited as the Illinois Administrative Procedure Act.

Section 1-5. Applicability.

- (a) This Act applies to every agency as defined in this Act. Beginning January 1, 1978, in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. If, however, an agency has existing procedures on July 1, 1977, specifically for contested cases or licensing, those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provisions of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, those procedures shall remain in effect.
- (b) The provisions of this Act do not apply to (i) preliminary hearings, investigations, or practices where no final determinations affecting State funding are made by the State Board of Education, (ii) legal opinions issued under Section 2-3.7 of The School Code, (iii) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures, and (iv) the class specifications for positions and individual position descriptions prepared and maintained under the Personnel Code. Those class specifications shall, however, be made reasonably available to the public for inspection and copying. The provisions of this Act do not apply to hearings under Section 20 of the Uniform Disposition of Unclaimed Property Act.
- (c) Section 5-35 of this Act relating to procedures for rulemaking does not apply to the following:
 - (1) Rules adopted by the Pollution Control Board that, in accordance with Section 7.2 of the Environmental Protection Act, are identical in substance to federal regulations or amendments to those regulations implementing the following: Sections 3001, 3002, 3003, 3004, 3005, and 9003 of the Solid Waste Disposal Act; Section 105 of the Comprehensive Environmental response, Compensation, and Liability Act of 1980; Sections 307(b), 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal Water Pollution Control Act; and Sections 1412(b), 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking Water Act.
 - (2) Rules adopted by the Pollution Control Board that establish or amend standards for the emission of hydrocarbons and carbon monoxide from gasoline powered motor vehicles subject to inspection under Section 13(a)-105 of the Vehicle Emissions Inspection Law and rules adopted under Section 13(b)-20 of the Vehicle Emissions Inspection Law of 1995.
 - (3) Procedural rules adopted by the Pollution Control Board governing requests for exceptions under Section 14.2 of the Environmental Protection Act.
 - (4) The Pollution Control Board's grant, pursuant to an adjudicatory determination, of an adjusted standard for persons who can justify an adjustment consistent with subsection (a) of Section 27 of the Environmental Protection Act.

- (5) Rules adopted by the Pollution Control Board that are identical in substance to the regulations adopted by the Office of the State Fire Marshal under clause (ii) of paragraph (b) of subsection (3) of Section 2 of the Gasoline Storage Act.

- (d) Pay rates established under Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5-50 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code.

Section 1-10. Definitions.

As used in this Act, unless the context otherwise requires, terms have the meanings set forth in the following Sections.

Section 1-15.

“Administrative law judge” means the presiding officer or officers at the initial hearing before each agency and each continuation of that hearing. The term also includes but is not limited to hearing examiners, hearing officers, referees, and arbitrators.

Section 1-20.

“Agency” means each officer, board, commission, and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, and body politic and corporate of the State; each administrative unit or corporate outgrowth of the State government that is created by or pursuant to statute, other than units of local government and their officers, school districts, and boards of election commissioners; and each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. “Agency”, however, does not include the following:

- (1) The House of Representatives and Senate and their respective standing and service committees.
- (2) The Governor.
- (3) The justices and judges of the Supreme and Appellate Courts.

Section 1-25.

“Agency head” means an individual or group of individuals in whom the ultimate legal authority of an agency is vested by any provision of law.

Section 1-30.

“Contested case” means an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.

Section 1-35.

“License” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

Section 1-40.

“Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Section 1-45.

“Municipality” has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code.

Section 1-50.

“Order” means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

Section 1-55.

“Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

Section 1-60.

“Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Section 1-65.

“Ratemaking” or “ratemaking activities” means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm, or corporation operating or transacting any business in this State.

Section 1-70.

“Rule” means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (ii) informal advisory rulings issued under Section 5-150, (iii) intra-agency memoranda, (iv) the prescription of standardized forms, or (v) documents prepared or filed or actions taken by the Legislative Reference Bureau under Section 5.04 of the Legislative Reference Bureau Act.

Section 1-75.

“Small business” means a corporation or a concern, including its affiliates, that is independently owned and operated, not dominant in its field, and employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define small business to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

Section 1-80.

“Small municipality” means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants that employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50 persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities.

Section 1-85.

“Not for profit corporation” means a corporation organized under the General Not For Profit Corporation Act of 1986 that is not dominant in its field and employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define a not for profit corporation to include employment of 50 or more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of not for profit corporations.

ARTICLE 5. RULEMAKING PROVISIONS

Section 5-5. Applicability.

All rules of agencies shall be adopted in accordance with this Article.

Section 5-10. Adoption and availability of rules.

- (a) In addition to other rulemaking requirements imposed by law, each agency shall (i) adopt rules of practice setting forth the nature and requirements of all formal hearings and (ii) make available for public inspection all rules adopted by the agency in the discharge of its functions.
- (b) Each agency shall make available for public inspection all final orders, decisions, and opinions, except those deemed confidential by State or federal statute and any trade secrets.
- (c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. No agency, however, shall assert the invalidity of a rule that it has adopted under this Act when an opposing party has relied upon the rule.
- (d) Rulemaking that creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5-40 is published or when the rule is published under Section 5-45 or 5-50.

Section 5-15. Required rules.

- (a) Each agency shall maintain as rules the following:
 - (1) A current description of the agency's organization with necessary charts depicting that organization.
 - (2) The current procedures by which the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency. Requests for copies of agency rules shall not be deemed Freedom of Information Act requests unless so labeled by the requestor.
 - (3) Tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force.
 - (4) A current description of the agency's rulemaking procedures with necessary flow charts depicting those procedures.
 - (5) Any rules adopted under this Section in accordance with Sections 5-75 and 10-20 of this Act.
- (b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section instead of any other provisions or requirements of this Act.
The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State under subsections paragraphs (a) and (b) of Section 5-65 and may become effective immediately.

Section 5-20. Implementing discretionary powers.

Each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practicable under the conditions to inform fully those persons affected.

Section 5-25. Ratemaking.

Every agency that is empowered by law to engage in ratemaking activities shall establish by rule, not inconsistent with the provisions of law establishing its ratemaking jurisdiction, the practice and procedures to be followed in ratemaking activities before the agency.

Section 5-30. Regulatory flexibility.

When an agency proposes a new rule or an amendment to an existing rule that may have an impact on small businesses, not for profit corporations, or small municipalities, the agency shall do each of the following:

- (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses, not for profit corporations, or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods if it finds that the methods are legal and feasible in meeting the statutory objectives that are the basis of the proposed rulemaking.
 - (1) Establish less stringent compliance or reporting requirements in the rule for small businesses, not for profit corporations, or small municipalities.
 - (2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
 - (3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses, not for profit corporations, or small municipalities.
 - (4) Establish performance standards to replace design or operational standards in the rule for small businesses, not for profit corporations, or small municipalities.
 - (5) Exempt small businesses, not for profit corporations, or small municipalities from any or all requirements of the rule.
- (b) Before or during the notice period required under subsection (b) of Section 5-40, the agency shall provide an opportunity for small businesses, not for profit corporations, or small municipalities to participate in the rulemaking process. The agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.
 - (1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses, not for profit corporations, or small municipalities.
 - (2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses, not for profit corporations, or small municipalities.
 - (3) The direct notification of interested small businesses, not for profit corporations, or small municipalities.
 - (4) The conduct of public hearings concerning the impact of the rule on small businesses, not for profit corporations, or small municipalities.
 - (5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses, not for profit corporations, or small municipalities.
- (c) Before the notice period required under subsection (b) of Section 5-40, the Secretary of State shall provide to the Business Assistance Office of the Department of Commerce and Community Affairs a copy of any proposed rules or amendments accepted for publication. The Business Assistance Office shall prepare an impact analysis of the rule describing the rule's effect on small businesses whenever the Office believes, in its discretion, that an analysis is warranted or whenever requested to do so by 25 interested persons, an association representing at least 100 interested persons, the Governor, a unit of local government, or the Joint Committee on Administrative Rules. The

impact analysis shall be completed within the notice period as described in subsection (b) of Section 5-40. Upon completion of the analysis the Business Assistance Office shall submit this analysis to the Joint Committee on Administrative Rules, any interested person who requested the analysis, and the agency proposing the rule. The impact analysis shall contain the following:

- (1) A summary of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule.
- (2) A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.
- (3) An estimate of the economic impact that the regulation will have on the various types of small businesses affected by the rulemaking.
- (4) A description or listing of alternatives to the proposed rule that would minimize the economic impact of the rule. The alternatives must be consistent with the stated objectives of the applicable statutes and regulations.

Section 5-35. Procedure for rulemaking.

- (a) Before the adoption, amendment, or repeal of any rule, each agency shall accomplish the actions required by Section 5-40, 5-45, 5-50, whichever is applicable.
- (b) No action by any agency to adopt, amend, or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.
- (c) The rulemaking procedures of this Article 5 do not apply to a matter relating solely to agency management or personnel practices or to public property, loans, or contracts.

Section 5-40. General rulemaking.

- (a) In all rulemaking to which Sections 5-45 and 5-50 do not apply, each agency shall comply with this Section.
- (b) Each agency shall give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include all the following:
 - (1) The text of the proposed rule, the old and new materials of a proposed amendment, or the text of the provision to be repealed.
 - (2) The specific statutory citation upon which the proposed rule, the proposed amendment to a rule, or the proposed repeal of a rule is based and by which it is authorized.
 - (3) A complete description of the subjects and issues involved.
 - (4) For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis containing a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance.
 - (5) The time, place, and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall accept from any interested persons data, views, arguments, or

comments. These may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for the submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking during the first notice period if (i) during the first notice period, the agency finds that a public hearing would facilitate the submission of views and comments that might not otherwise be submitted or (ii) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government that may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. A public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 5 days before submission of the notice required under subsection (c) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at the hearings. The hearings must be open to the public and recorded by stenographic or mechanical means. At least one agency representative shall be present during the hearing who is qualified to respond to general questions from the public regarding the agency's proposal and the rulemaking process.

- (c) Each agency shall provide additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period and shall expire 45 days thereafter unless before that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days or unless the agency has received a statement of objection from the Joint Committee or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include (i) the text and location of any changes made to the proposed rulemaking during the first notice period in a form prescribed by the Joint Committee; (ii) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis containing a summary of issues raised by small businesses during the first notice period and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (iii) if a written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register under subsection (b) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each small business that has presented views or comments on the proposed rulemaking during the first notice period and to any other interested person who requests a copy. The agency may charge a reasonable fee for providing the copies to cover postage and handling costs.
- (d) After the expiration of the second notice period, after notification from the Joint Committee that no objection will be issued, or after a response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, under Section 5-65, a certified copy of each rule, modification, or repeal of any rule adopted by it. The copy shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing unless a later effective date is required by statute or is specified in the rulemaking.
- (e) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under subsection (b) commenced. Any period during which the rulemaking is prohibited from being filed under Section 5-1.5 shall not be considered in calculating this one-year time period.

Section 5-45. Emergency rulemaking.

- (a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.
- (b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without

prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted under this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

- (c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules that may be adopted in a 24-month period does not apply to (i) emergency rules that make additions to and deletions from the Drug Manual under Section 5-5.16 of the Illinois Public Aid Code or the generic drug formulary under Section 3.14 of the Illinois Food, Drug and Cosmetic Act or (ii) emergency rules adopted by the Pollution Control Board before July 1, 1997 to implement portions of the Livestock Management Facilities Act. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section.
- (d) In order to provide for the expeditious and timely implementation of the State's fiscal year 1998 budget, emergency rules to implement any provision of this amendatory Act of 1997 or any other budget initiative for fiscal year 1998 may be adopted in accordance with this Section by the agency charged with administering that provision or initiative, except that the 24-month limitation on the adoption of emergency rules and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted under this subsection (d). The adoption of emergency rules authorized by this subsection (d) shall be deemed to be necessary for the public interest, safety, and welfare.

Section 5-46.1. Emergency rulemaking.

- (a) The General Assembly finds that the State's current financial situation constitutes an emergency for the purposes of this Act.
- (b) Beginning July 1, 1995, agencies may implement the changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1995 or other budget reduction initiatives for Fiscal Year 1996.
- (c) Agencies may implement the changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997 through the use of emergency rules in accordance with the provisions of Section 5-45 of this Act, except that the 24-month limitation on the adoption of similar emergency rules under Section 5-45 and the provisions of Sections 5-115 and 5-125 do not apply to rules adopted to implement changes made by this amendatory Act of 1996 or other budget reduction initiatives for Fiscal Year 1997.

Section 5-50. Peremptory rulemaking.

"Peremptory rulemaking" means any rulemaking that is required as a result of federal law, federal rules and regulations, an order of a court, or a collective bargaining agreement pursuant to subsection (b) of Section 1-5, under conditions that preclude compliance with the general rulemaking requirements imposed by Section 5-40 and that preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. If any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State under Section 5-70. The notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, shall specifically refer to the appropriate state or federal court order or federal law, rules, and regulations, and shall be in a form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required.

Section 5-55. Automatic repeal of rules.

A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published in the Illinois Register not less than 30 nor more than 60 days before the effective date of the repeal. This Section does not apply to any rules filed under Section 5-45.

Section 5-60. Regulatory agenda.

An agency shall submit for publication in the Illinois Register by January 1 and July 1 of each year a regulatory agenda to elicit public comments concerning any rule that the agency is considering proposing but for which no notice of proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of those rules. Each summary shall, in less than 2,000 words, contain the following when practicable:

- (1) A description of the rule.
- (2) The statutory authority the agency is exercising.
- (3) A schedule of the dates for any hearings, meetings, or other opportunities for public participation in the development of the rule.
- (4) The date the agency anticipates submitting a notice of proposed rulemaking activity, if known.
- (5) The name, address, and telephone number of the agency representative who is knowledgeable about the rule, from whom any information may be obtained, and to whom written comments may be submitted concerning the rule.
- (6) A statement whether the rule will affect small businesses, not for profit corporations, or small municipalities as defined in this Act.
- (7) Any other information that may serve the public interest.

Nothing in this Section shall preclude an agency from adopting a rule that has not been summarized in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda if in the agency head's best judgement it is necessary. If an agency finds that a situation exists that requires adoption of a rule that was not summarized on either of the 2 most recent regulatory agendas, it shall state its reasons in writing together with the facts that form their basis upon filing the notice of proposed rulemaking with the Secretary of State under Section 5-40. Nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines.

Section 5-65. Filing of rules.

- (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

Whenever a rule or modification or repeal of any rule is filed with the Secretary of State, the Secretary shall send a certified copy of the rule, modification or repeal, within 3 working days after it is filed, to the Joint Committee on Administrative Rules.

- (b) Concurrent with the filing of any rule under this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. The notice shall include the following:
 - (1) The text of the adopted rule, including the full text of the new rule (if the material is a new rule), the full text of the rule or rules as amended (if the material is an amendment to a rule or rules), or the notice of

repeal (if the material is a repealer).

- (2) The name, address, and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.
- (3) Other information that the Secretary of State may by rule require in the interest of informing the public.

Section 5-70. Form and publication of notices.

- (a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with the Secretary of State and may refuse to accept for filing certified copies that do not comply with the rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day (unless that day is an official State holiday, in which case the Illinois Register shall be published on the next following business day) and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.
- (b) The Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including but not limited to Board opinions, the results of Board determinations concerning adjusted standards proceedings, notices of petitions for individual adjusted standards, results of Board determinations concerning the necessity for economic impact studies, restricted status lists, hearing notices, and any other documents related to the activities of the Pollution Control Board that the Board deems appropriate for publication.

Section 5-75. Incorporation by reference.

- (a) An agency may incorporate by reference, in its rules adopted under Section 5-35, rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by publisher address and date in order to specify how a copy of the material may be obtained and must state that the rule, regulation, standard, or guideline does not include any later amendments or editions. An agency may incorporate by reference these matters in its rules only if the agency, organization, or association originally issuing the matter makes copies readily available to the public. This Section does not apply to any agency internal manual.

For any law imposing taxes on or measured by income, the Department of Revenue may promulgate rules that include incorporations by reference of federal rules or regulations without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments.

- (b) Use of the incorporation by reference procedure under this Section shall be reviewed by the Joint Committee on Administrative Rules during the rulemaking process as set forth in this Act.
- (c) The agency adopting a rule, regulation, standard, or guideline under this Section shall maintain a copy of the referenced rule, regulation, standard, or guideline in at least one of its principal offices and shall make it available to the public upon request for inspection and copying at no more than cost. Requests for copies of materials incorporated by reference shall not be deemed Freedom of Information Act requests unless so labeled by the requestor. The agency shall designate by rule the agency location at which incorporated materials are maintained and made available to the public for inspection and copying. These rules may be adopted under the procedures in Section 5-15. In addition, the agency may include the designation of the agency location of incorporated materials in a rulemaking under Section 5-35, but emergency and peremptory rulemaking procedures may not be used solely for this purpose.

Section 5-80. Publication of rules.

- (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon

establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

- (b) Each rule proposed in compliance with the codification system shall be reviewed by the Secretary of State before the expiration of the public notice period under subsection (b) of Section 5-40. The Secretary of State shall cooperate with agencies in the Secretary of State's review to insure that the purposes of the codification system are accomplished. The Secretary of State shall have the authority to make changes in the numbering and location of the rule in the codification scheme if those changes do not affect the meaning of the rules. The Secretary of State may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The Secretary of State may add notes concerning the statutory authority, dates proposed and adopted, and other similar notes to the text of the rules, if the notes are not supplied by the agency. This review by the Secretary of State shall be for the purpose of insuring the uniformity of and compliance with the codification system. The Secretary of State shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables, and other aids for locating rules to assist the public in the use of the Code.
- (c) The Secretary of State shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency, in the notice required by subsection (c) of Section 5-40, shall provide to the Joint Committee a response to the recommendations of the Secretary of State including any reasons for not adopting the recommendations.
- (d) If a reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law affects rules on file with the Secretary of State, the Secretary of State shall notify the Governor, the Attorney General, and the agencies involved of the effects upon the rules on file. If the Governor or the agencies involved do not respond to the Secretary of State's notice within 45 days by instructing the Secretary of State to delete or transfer the rules, the Secretary of State may delete or place the rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General, and the agencies involved.
- (f) The Secretary of State shall ensure that the Illinois Administrative Code is published and made available to the public in a form that is updated at least annually. The Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the Secretary of State. The Secretary of State shall design the Illinois Register to supplement the Code. The Secretary of State shall ensure that copies of the Illinois Register are available to the public and governmental entities and agencies.

If the Secretary of State determines that the Secretary's office will publish and distribute either the Register or the Code, the Secretary shall make copies available to the public at a reasonable fee, established by the Secretary by rule, and shall make copies available to governmental entities and agencies at a price covering publication and mailing costs only.

The Secretary of State shall make the electronically stored database of the Illinois Register and the Code available in accordance with this Section and Section 5.08 of the Legislative Information System Act.

- (g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule as adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such a presumption. Judicial or official notice shall be taken of the text of each rule published in the Code or Register.
- (h) The codification system, the indexes, tables, and other aids for locating rules prepared by the Secretary of State, notes, and other materials developed under this Section in connection with the publication of the Illinois

Administrative Code and the Illinois Register shall be the official compilations of the administrative rules of Illinois and shall be entirely in the public domain for purposes of federal copyright law.

- (i) The Legislative Information System shall maintain on its electronic data processing equipment the complete text of the Illinois Register and the Illinois Administrative Code created in compliance with this Act. This electronic information shall be made available for use in the publication of the Illinois Register and Illinois Administrative Code by the Secretary of State if the Secretary determines that his office will publish these materials as authorized by subsection (f).
- (j) The Legislative Information System, upon consultation with the Joint Committee on Administrative Rules and the Secretary of State, shall make the electronically stored database of the Illinois Register and the Illinois Administrative Code available in an electronically stored medium to those who request it. The Legislative Information System shall establish and charge a reasonable fee for providing the electronic information. Amounts received under this Section shall be deposited into the General Assembly Computer Equipment Revolving Fund

Section 5-85. Correction of rules filed with the Secretary of State.

- (a) Corrections to a proposed rulemaking that has been published in the Illinois Register but is not yet adopted shall be made pursuant to the rules of the Secretary of State. Corrections to an adopted rulemaking that has been published in the Illinois Register shall be made by initiating a new rulemaking or pursuant to subsection (b).
- (b) Expedited corrections to any form of adopted rule that has been published in the Illinois Register shall be made pursuant to the procedures set forth in this subsection (b) and the rules of the Joint Committee on Administrative Rules adopted pursuant to this subsection (b).

An agency may request that the Joint Committee on Administrative Rules issue a certification of correction under this subsection (b) to correct; (1) non-substantive errors such as typographical, clerical, grammatical, printing, copying or other inadvertent errors such as omission of existing or inclusion of previously repealed Illinois Administrative Code text; (2) any omissions or errors that create unintentional discrepancies between adopted rule text and text previously published in the Illinois Register or second notice rule text; or (3) any discrepancies between adopted rule text and agreements certified by the Joint Committee on Administrative Rules during the second notice period.

In requesting the Joint Committee on Administrative Rules to issue a certification of correction, the agency shall specify which of the above reasons for correction is applicable and shall submit the full affected Section of the Code, indicating both the incorrect text and the agency's proposal for correcting the error. The Joint Committee on Administrative Rules shall verify that the requested correction meets the criteria of this subsection (b), that the public interest will be served and no hardship created by remediation of the error or omission more quickly than could be accomplished by the regular rulemaking process, and that the public notice considerations of this Act are not being unduly circumvented.

Upon receiving a certification of correction from the Joint Committee on Administrative Rules, an agency shall file a notice of correction with the Secretary of State for publication in the next available issue of the Illinois Register. Pursuant to agreement between the Joint Committee on Administrative Rules and the agency, the effective date of the correction shall be identical to that of the adopted rule being corrected or a specified later date.

The agency shall take reasonable and appropriate measures to make rule corrections known to persons who may be affected by them.

Section 5-90. Joint Committee on Administrative Rules.

- (a) The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984. When feasible, the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days before the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5-40 were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee

from acting upon an item that was not contained in the published agenda.

- (b) The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. The Joint Committee shall, however, provide copies of documents or publications without cost to agencies that are directly affected by recommendations or findings included in the documents or publications.

Section 5-95. Oaths and affirmations.

- (a) The Executive Director of the Joint Committee or any designated person may administer oaths or affirmations and take affidavits or depositions of any person.
- (b) The Executive Director, upon approval of a majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person. They also may subpoena and compel the production for the Joint Committee of any records, books, papers, contracts, or other documents.
- (c) If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt.

Section 5-100. Powers of the Joint Committee.

The Joint Committee shall have the following powers under this Act:

- (a) The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting those rules. This function shall be advisory only, except as provided in Sections 5-115 and 5-125.
- (b) The Joint Committee may undertake studies and investigations concerning rulemaking and agency rules.
- (c) The Joint Committee shall monitor and investigate agencies' compliance with the provisions of this Act, make periodic investigations of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects, and public policy.
- (d) Hearings and investigations conducted by the Joint Committee under this act may be held at times and places within the State as the Committee deems necessary.
- (e) The Joint Committee may request from any agency an analysis of the following:
 - (1) The effect of a new rule, amendment, or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues.
 - (2) The agency's evaluation of the submissions presented to the agency under Section 5-40.
 - (3) A description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment, or repealer.
 - (4) The agency's justification and rationale for the intended rule, amendment, or repealer.
- (f) Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly.

Section 5-105. Responsibilities of the Joint Committee.

The Joint Committee shall have the following responsibilities under this Act:

- (a) The Joint Committee shall conduct a systematic and continuing study of the rules and rulemaking process of all State agencies, including those agencies not covered in Section 1-25, for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions, and correcting grammatical, typographical, and similar errors not affecting the construction or meaning of the rules. The Joint Committee shall make recommendations to the appropriate affected agency.
- (b) The Joint Committee shall review the statutory authority on which any administrative rule is based.
- (c) The Joint Committee shall maintain a review program to study the impact of legislative changes, court rulings, and administrative action on agency rules and rulemaking.
- (d) The Joint Committee shall suggest rulemaking by an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent, or otherwise deficient.

Section 5-110. Responsibilities of the Joint Committee with respect to proposed rules, amendments, or repealers.

- (a) The Joint Committee shall examine any proposed rule, amendment to a rule, and repeal of a rule to determine whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based; whether the rule, amendment to a rule, or repeal of a rule is in proper form; and whether the notice was given before its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment, or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule that are consistent with the stated objectives of both the applicable statutes and regulations and whether the rule is designed to minimize economic impact on small businesses.
- (b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.
- (c) If within the second notice period the Joint Committee certifies its objections to the issuing agency, then that agency shall do one of the following within 90 days after receiving the statement of objection:
 - (1) Modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections.
 - (2) Withdraw the proposed rule, amendment, or repealer in its entirety.
 - (3) Refuse to modify or withdraw the proposed rule, amendment, or repealer.
- (d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make those modifications that are necessary to meet the objections and shall resubmit the rule, amendment, or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment, or repealer to meet the Joint Committee's objections to the Secretary of State, and the notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of that notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.
- (e) If an agency elects to withdraw a proposed rule, amendment, or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall submit a notice of the withdrawal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register.
- (f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment, or repealer

within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment, or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State, and the notice shall be published in the next available issue of the Illinois Register. The Secretary of State shall refuse to accept for filing a certified copy of the proposed rule, amendment, or repealer under the provisions of Section 5-65.

- (g) If an agency refuses to modify or withdraw the proposed rule, amendment, or repealer to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.
- (h) No rule, amendment, or repeal of a rule shall be accepted by the Secretary of State for filing under Section 5-65, if the rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.
- (i) The Joint Committee shall evaluate and analyze all State forms that have been developed or revised after September 7, 1984, to ascertain the burden, if any, of complying with those forms by small businesses. The evaluation and analysis shall occur during the Joint Committee's review conducted under Section 5-130. If the Joint Committee determines that the form is unduly burdensome to small businesses, the Joint Committee may object to the form or make specific recommendations for change in the form. Objections to forms shall be made in the manner prescribed in Section 5-120. For the purposes of this subsection, the terms "State form" and "form" mean any document or piece of paper used by a State agency requesting or transmitting information, printed or reproduced by whatever means, usually with blank spaces for the entry of additional information, to be used in any transaction between the State of Illinois and private sector businesses. These include but are not limited to grant applications, licensing applications, permit applications, and requests for proposal applications, but do not include books, pamphlets, newsletters, and intra-agency forms that do not affect the rights of or procedures available to persons or entities outside the State agency.

Section 5-115. Other action by the Joint Committee.

- (a) If the Joint Committee determines that the adoption and effectiveness of a proposed rule, amendment, or repealer or portion of a proposed rule, amendment, or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and would constitute a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect at any time before the proposed rule, amendment, or repealer takes effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of the statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.
- (b) The proposed rule, amendment, or repealer or the portion of the proposed rule, amendment, or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days after receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment, or repealer or any portion thereof that is prohibited from being filed by this subsection during this 180 day period.
- (c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the prohibition against the proposed rule, amendment, or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall, immediately following its first reading, be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If the joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment, or repealer or the portion thereof and the proposed rule, amendment, or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment, or repealer or the portion thereof that the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period

provided in subsection (b) expires before passage of the joint resolution, the agency may file the proposed rule, amendment, or repealer or the portion thereof as adopted and it shall take effect.

Section 5-120. Responsibilities of the Joint Committee with respect to emergency, preemptory, and other existing rules.

- (a) The Joint Committee may examine any rule to determine whether the rule is within the statutory authority upon which it is based and whether the rule is in proper form.
- (b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.
- (c) Within 90 days after receiving the certification, the agency shall do one of the following:
 - (1) Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection.
 - (2) Notify the Joint Committee that it has elected to repeal the rule.
 - (3) Notify the Joint Committee that it refuses to amend or repeal the rule.
- (d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35. The Joint Committee shall give priority to rules so amended when setting its agenda.
- (e) If the agency elects to repeal a rule as a result of the Joint Committee's objections, it shall notify the Joint Committee in writing of its election and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5-35.
- (f) If the agency elects to amend or repeal a rule as a result of the Joint Committee's objections, it shall complete the process within 180 days after giving notice in the Illinois Register.
- (g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.
- (h) If an agency refuses to amend or repeal a rule to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State. The notice shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

Section 5-125. Other Joint Committee action with respect to emergency or preemptory rulemaking.

- (a) If the Joint Committee determines that a rule or portion of a rule adopted under Section 5-45 or 5-50 is objectionable under any of the standards for the Joint Committee's review specified in Section 5-100, 5-105, 5-110, 5-120, or 5-130 and constitutes a serious threat to the public interest, safety, or welfare, the Joint Committee may issue a statement to that effect. The statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of the statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register. Within 30 days of transmittal of the statement to the agency, the agency shall notify the Joint Committee in writing whether it has elected to repeal or amend the rule. Failure of the agency to notify the Joint Committee and Secretary of State within 30 days constitutes a decision by the agency to not repeal the rule.
- (b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate the suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules

or portions of rules suspended under this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension under subsection (c). The agency may not enforce, or invoke for any reason, a rule or portion of a rule that has been suspended under this subsection. During the 180 day period, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended under this subsection.

- (c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If the joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove the rule or portion of a rule from the collection of effective rules.

Section 5-130. Periodic review of existing rules.

- (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee by rule shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. The schedule shall include at least the following categories:
 - (1) Human resources.
 - (2) Law enforcement.
 - (3) Energy.
 - (4) Environment.
 - (5) Natural resources.
 - (6) Transportation.
 - (7) Public utilities.
 - (8) Consumer protection.
 - (9) Licensing laws.
 - (10) Regulation of occupations.
 - (11) Labor laws.
 - (12) Business regulation.
 - (13) Financial institutions.
 - (14) Government purchasing.
- (b) When evaluating rules under this Section, the Joint Committee's review shall include an examination of the following:
 - (1) Organizational, structural, and procedural reforms that affect rules or rulemaking.

- (2) Merger, modification, establishment, or abolition of regulations.
- (3) Eliminating or phasing out outdated, overlapping, or conflicting regulatory jurisdictions or requirements of general applicability.
- (4) Economic and budgetary effects.

Section 5-135. Administration of Act.

The Joint Committee may adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers, and duties under this Article 5.

Section 5-140. Reports to the General Assembly.

The Joint Committee shall report its findings, conclusions, and recommendations, including suggested legislation, to the General Assembly by February 1 of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader, and the Clerk of the House of Representatives, the President, the Minority Leader, and the Secretary of the Senate, and the Legislative Research Unit, as required by Section 3.1 of the General Assembly Organization Act, and filing additional copies with the State Government Report Distribution Center for the General Assembly as required under paragraph (t) of Section 7 of the State Library Act.

Section 5-145. Request for adoption of rules.

- (a) An agency shall, in accordance with Section 5-35, adopt rules that implement recently enacted legislation of the General Assembly in a timely and expeditious manner.
- (b) Any interested person may request an agency to adopt, amend, or repeal a rule. Each agency shall prescribe by rule the procedure for consideration and disposition of the person's request. If, within 30 days after submission of a request, the agency has not initiated rulemaking proceedings in accordance with Section 5-35, the request shall be deemed to have been denied.

Section 5-150. Declaratory rulings.

- (a) Requests for rulings. Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling before making it available.
- (b) Overlapping regulations.
 - (1) Any persons subject to a rule imposed by a State agency and to a similar rule imposed by the federal government may petition the agency administering the State rule for a declaratory ruling as to whether compliance with the federal rule will be accepted as compliance with the State rule.
 - (2) If the agency determines that compliance with the federal rule would not satisfy the purposes or relevant provisions of the State law involved, the agency shall so inform the petitioner in writing, stating the reasons for the determination, and may issue a declaratory ruling to that effect.
 - (3) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law involved but that it would not satisfy the relevant provisions of the State rule involved, the agency shall so inform the petitioner and the Joint Committee on Administrative Rules, and the agency may initiate a rulemaking proceeding in accordance with Section 5-35 to consider revising the

rule to accept compliance with the federal rule in a manner that is consistent with the purposes and relevant provisions of the State law.

- (4) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law and the State rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal rule as compliance with the State rule and the terms and conditions under which it intends to do so.

Section 5-155. References to this Act.

After the effective date of this amendatory Act of 1991, when rules contain references to Sections of this Act as they were numbered before the effective date of this amendatory Act of 1991, agencies shall within one year amend those rules to change the references to the Section numbers created by this amendatory Act of 1991. The amendment may be adopted by filing with the Secretary of State for publication in the Illinois Register a notice that lists the precise regulatory citations of the obsolete statutory references that are being revised and the new citation for each. Upon filing a notice, the agency shall also certify to the Secretary of State a copy of each rule that contains an amended citation for the Illinois Administrative Code. All such certified rules shall be adopted and effective immediately upon filing.

Section 5-160.

Certain provisions of the Illinois Public Aid Code control over provisions of this Act. In the event that any provisions of this Act are in conflict with the provisions of Section 4-2 of the Illinois Public Aid Code, the provisions of Section 4-2 of the Illinois Public Aid Code shall control.

ARTICLE 10. ADMINISTRATIVE HEARINGS

Section 10-5. Rules required for hearings.

All agencies shall adopt rules establishing procedures for contested case hearings.

Section 10-10. Components of rules.

All agency rules establishing procedures for contested cases shall at a minimum comply with the provisions of this Article 10. In addition, agency rules establishing procedures may include, but need not be limited to, the following components: pre-hearing conferences, representation interview or deposition procedures, default procedures, selection of administrative law judges, the form of the final order, the standard of proof used, which agency official makes the final decision, representation of parties, subpoena request procedures, discovery and protective order procedures, and any review or appeal process within the agency.

Section 10-15. Standard of proof.

Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

Section 10-20. Qualifications of administrative law judges.

All agencies shall adopt rules concerning the minimum qualifications of administrative law judges for contested case hearings. The agency head or an attorney licensed to practice law in Illinois may act as an administrative law judge or panel for an agency without adopting any rules under this Section. These rules may be adopted using the procedures in either Section 5-15 or 5-35.

Section 10-25. Contested cases; notice; hearing.

- (a) In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice. The notice shall be served personally or by certified or registered mail or as otherwise provided by law upon the parties or their agents appointed to receive service of process and shall include the following:

- (1) A statement of the time, place, and nature of the hearing.
 - (2) A statement of the legal authority and jurisdiction under which the hearings is to be held.
 - (3) A reference to the particular Sections of the substantive and procedural statutes and rules involved.
 - (4) Except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted, the consequences of a failure to respond, and the official file or other reference number.
 - (5) The names and mailing addresses of the administrative law judge, all parties, and all other persons to whom the agency gives notice of the hearing unless otherwise confidential by law.
- (b) An opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.
 - (c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

Section 10-30. Disqualification of administrative law judge.

- (a) The agency head, one or more members of the agency head, or any other person meeting the qualifications set forth by rule under Section 10-20 may be the administrative law judge.
- (b) The agency shall provide by rule for disqualification of an administrative law judge for bias or conflict of interest. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

Section 10-35. Record in contested cases.

- (a) The record in a contested case shall include the following:
 - (1) All pleadings (including all notices and responses thereto), motions, and rulings.
 - (2) All evidence received.
 - (3) A statement of matters officially noticed.
 - (4) Any offers of proof, objections, and rulings thereon.
 - (5) Any proposed findings and exceptions.
 - (6) Any decision, opinion, or report by the administrative law judge.
 - (7) All staff memoranda or data submitted to the administrative law judge or members of the agency in connection with their consideration of the case that are inconsistent with Section 10-60.
 - (8) Any communication prohibited by Section 10-60. No such communication shall form the basis for any finding of fact.
- (b) Oral proceedings or any part thereof shall be recorded stenographically or by other means that will adequately insure the preservation of the testimony or oral proceedings and shall be transcribed on the request of any party.
- (c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Section 10-40. Rules of evidence; official notice.

In contested cases:

- (a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.
- (b) Subject to the evidentiary requirements of subsection (a) of this Section a party may conduct cross-examination required for a full and fair disclosure of the facts.
- (c) Notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Section 10-45. Proposal for decision.

Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision and shall be prepared by the persons who conducted the hearing or one who has read the record.

Section 10-50. Decisions and orders.

- (a) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.
- (b) All agency orders shall specify whether they are final and subject to the Administrative Review Law.
- (c) A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases, except to the extent those provisions are waived under Section 10-75 and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 1-5.

Section 10-55. Expenses and attorney's fees.

- (a) In any contested case initiated by any agency that does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 2-611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making the allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement that, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.
- (b) The claimant shall make a demand for litigation expenses to the agency. If the claimant is dissatisfied because of

the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making a claim for the expenses incurred in the administrative action. The Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or deny an award, to the extent that the claimant engaged in conduct during the course of the proceeding that unduly and unreasonably protracted the final resolution of the matter in controversy.

- (c) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

Section 10-60. Ex parte communications.

- (a) Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice and opportunity for all parties to participate.
- (b) However, an agency member may communicate with other members of the agency, and an agency member or administrative law judge may have the aid and advice of one or more personal assistants.
- (c) An ex parte communication received by any agency head, agency employee, or administrative law judge shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.
- (d) Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications under this Section.

Section 10-65. Licenses.

- (a) When any licensing is required by law to be preceded by notice and an opportunity for a hearing, the provisions of this Act concerning contested cases shall apply.
- (b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.
- (c) Each agency shall require the licensee to certify on the renewal application form, under penalty of perjury, that he or she is not more than 30 days delinquent in complying with a child support order. Every renewal application shall state that failure to so certify may result in a denial of the renewal, and that making a false statement may subject the licensee to contempt of court. The agency shall notify each licensee who acknowledges a delinquency or who, contrary to his or her certification, is found to be delinquent, that the agency intends to take disciplinary action. Accordingly, the agency shall provide written notice of the facts or conduct upon which the agency will rely to support its proposed action and the licensee shall be given an opportunity for a hearing in accordance with the provisions of the Act concerning contested cases. Any delinquency in complying with a child support order can be remedied by arranging for payment of past due and current support. Upon a final finding of delinquency, the agency shall revoke or refuse to renew the license. In cases in which the Department of Public Aid has previously determined that a licensee or a potential licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the licensing agency, the licensing agency may refuse to issue or renew or may revoke or suspend that person's license or may take other disciplinary action against that person based solely upon the certification of delinquency made by the Department of Public Aid. Redetermination of the delinquency by the licensing agency shall not be required. In cases regarding the renewal of a license, the licensing

agency shall not renew any license if the Department of Public Aid has certified the licensee to be more than 30 days delinquent in the payment of child support unless the licensee has arranged for payment of past and current child support obligations in a manner satisfactory to the Department of Public Aid. The licensing agency may impose conditions, restrictions, or disciplinary action upon that renewal.

- (d) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action and an opportunity for a hearing in accordance with the provisions of this Act concerning contested cases. At the hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, continuation, or renewal of the license. If, however, the agency finds that the public interest, safety, or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Those proceedings shall be promptly instituted and determined.
- (e) Any application for renewal of a license that contains required and relevant information, data, material, or circumstances that were not contained in an application for the existing license shall be subject to the provisions of subsection (a).

Section 10-70. Waiver.

Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties.

ARTICLE 15. SEVERABILITY AND EFFECTIVE DATE

Section 15-5. Severability.

If any provision of this Act or the application of any provision of this Act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable.

Section 15-10. Effective date.

This Act takes effect upon becoming a law.

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